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APPELLANTS' APPENDIX

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,167

CARL C. SMUCK  
a Member of the Board of Education  
of the District of Columbia,  
*Appellant*

v.

JULIUS W. HOBSON, *et al.*,  
*Appellees.*

No. 21,168

CARL F. HANSEN,  
Superintendent of Schools of the  
District of Columbia,  
*Appellant,*

v.

JULIUS W. HOBSON, *et al.*,  
*Appellees.*

APPEALS FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals  
for the District of Columbia Circuit

FILED JUN 11 1968 VOLUME III

*Nathan J. Paulson*  
CLERK





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A The realities of the situation have to be taken into account. The Congress requires a balanced budget. The Board of Education is governed at least in policy by reasonable expectations. I must add, however, that budgets askings have gone progressively higher in the last six or seven years, and the allocations of funds for schools have been stepped up to the point now that we have an average of around 17 to 18 million dollars for <sup>Construction</sup> instruction accounts each year as against an overall average of around 5 million during the ten year period before. So progress is being made toward the elimination of longstanding shortages and construction, in the conditions of buildings, and the number of buildings now which are old and delapidated, being sharply reduced.

I think we have to also keep in mind, however, that for example last year the Board of Education asked for more than 52 million in construction funds and the Commissioners reduced this amount to 32 million. We are hopeful that revenue bill will be passed so Congress can appropriate this amount. But all this is still in the hands of Congress for the reason that revenue prospect has not been carefully defined.

In substance, the Board of Education has stepped up its budget requesting, adding new services which I can

demonstrate if you want us to do this in very rapid order to bring the school system to a higher level of competence for the job it has to do.

Q Now, in connection with development of this particular budget, to wit, the one that goes to Congress each year, your staff and you have a general idea of available funds which the city has to operate its total facilities, do you not?

A Yes, we do, Mr. Redmon. Within recent years we have been moving beyond the expected limitations set by practical realities of the situation to request a total funding of new projects; for example, there has been a practice to move in special teacher programs by stages. We are now asking for total number of teachers needed, say in physical education or music, or art. In the case of counsellors, we are asking for the total number demanded by schools in accordance with Board of Education standards. The practice is to approach the budget problem with concern for the total needs in an effort to get away from the gradualism which has been inherent in the school system, I think historically from the time of its founding.

Q Did you indicate to Congressman Pucinski as to the practical problem of interposing such a budget of this large amount of money involved?



A This was indicated, I think, in conversations with Mr. Pucinski and his determination that there should be a system to the school program to recognize the fact that unusual and heroic measures have to be taken to fund the more than \$450 million budget. We must also be realistic in asking for approvement of maximum sizes, <sup>elementary grades</sup> /say 25 to 1; it would be necessary to step up construction by one-sixth, and therefor the construction budget would have to be phased in in advance of budgets which would improve the level of services.

So I think neither those of us on the committee or on the school side of the discussion anticipated the model school budget could be realized in any one given year, this would have to be a progressive thing for five years, we hope at the most.

Q I see. Clerk, would you mark this as Exhibit 1, please?

DEPUTY CLERK: Defendant's Exhibit No. 1 for identification.

(Defendants' Exhibit No. 1  
was marked for Identification.)

MR. REDMON: Mr. Counselor, that is your 16-a.

BY MR. REDMON:

Q I hand you, Dr. Hansen, what has been identified as Defense Exhibit 1 for identification, and would you please tell us what that book is?

A This is a catalog of what we call innovations in instruction. Each project of the 112 separate and distinct experimental developments is defined in a single page. This is for the purpose of informing your own people and informing others to what is going on in the school system and do it in such a way to keep the catalog up to date by replacing special pages.

Q What is the purpose of the 112 programs in the book?

A The programs are various types. I'd say the main thrust of them as entirety is to provide educational opportunities for youngsters who need them, something in addition to the traditional design of public education. For example, we have what we call early morning physical fitness programs which was designed for our boys in downtown city schools where boys come to school at 7:30 in the morning and undertake games and physical instruction with physical education men in charge, following which they take a shower and go to eat

breakfast which is prepared for them in the schools. Now the design of this particular innovation is to increase the educationability of the boys to give them the kind of physical development and cleanliness plus a breakfast which is really basic to successful education in the classroom.

Incidentally, may I tell you, we have a thousand or so youngsters in this program now. We are constantly learning of the importance of social contributions to the welfare of the young. I had a call from a person in charge that in some cases the boys in taking showers, had such poor underwear that after they took them off couldn't hardly get them back on and the question was, can we buy some? So we are using money to buy even underwear. This is an illustration.

Another is the Urban Service Corps under which we bring parents of young children of preschool age into a school setting which they with their children and counsellors and teachers become acquainted with what school is like and get some background.

We have the school for pregnant girls. In one of our efforts to keep children in school, we have set up



what we call a school for girls who are pregnant out of wedlock. This is being enlarged and expanded. The purpose is to keep the girls in the mainstream of educational opportunities and when the child is born, ~~will~~ come back and complete high school work. Studies made on the effectiveness on the first year are very promising. I believe 75% of the girls come back.

So these are the projects we could discuss almost indefinitely, but the document speaks for itself. My point is that the school system in Washington is making deliberate efforts to find ways to get at the causes of educational disability.

Q Would such programs have any effect on the drop-out rate in the District of Columbia?

A Yes, of course it would. The school for pregnant girls is a case in point. Obviously the girls remain in school. Stay-in-school, which is organized at Spingarn High School is for boys and girls who dropped out, meeting at 3:30 in the afternoon, running til about 8:00, offering courses which lead to high school diplomas. It is an expanding, growing program designed to return young people to school. We have an extensive program in the Armstrong



Adult Educational Center which is designed for the same purpose, to make it possible for adults to complete high school.

We have, for example also, basic education program for illiterates or near illiterate adults with a membership of near a thousand. These are aspects of some of the programs going on.

Q Dr. Hansen, doesn't the Pupil Personnel Placement Department of the school administration have a program which is geared towards attempting to reach potential drop-outs as they arise?

A Yes, they do, Mr. Redmon. As a part of our program under Title I money, counselling services in our Pupil Personnel Department have searched out through the study of records in all of the target schools from the kindergarten through upper grades something more than 22,000 boys and girls who by indications which are predictive of being out of school are what we call drop-out prone. The study has been designed for the purpose of identifying the youngsters by their conditions and then moving in to the extent we can to get at the conditions which make them drop out prone, follow them through school from the earliest grades on one-to-one basis

so that we can make a maximum effort to eliminate those causes likely to produce school leaving. This has now been done. These children have been identified. The next step of the program is developing special approaches --psychological and educational, perhaps even social. Many of the problems are social-economic.

Q Did I not understand correctly, Dr. Hansen, the same department also has a plan or proposed plan which will attempt to reach these children after they have dropped out of school?

A The efforts will be made --Of course you understand many of these children are under the age of 16 that are drop-out prone-- will continue to be made to follow the youngsters into the neighborhoods if they do drop out. This in a sense will be an extension of the counselling program organized three summers ago which we put counsellors on the street to visit homes and query the parent and the youngster who had dropped out of school. So the import of what is being done is really the schools are accepting as a responsibility something more than the traditional four walls approach to the education beyond. Doing this upon the premise that children must be educable to profit from school attendance.

Q Dr. Hansen, you are certainly aware from reading the complaints in this case, it has been alleged you are intentionally discriminating against a certain portion of the people of the District of Columbia by virtue of the actions of the administration and the same charge is leveled at the school board. And you are probably aware from the train of testimony which has developed in this case the inferences being made which you developed a track system as another way of promoting segregation after 1954. I would ask you, sir, what actions were being taken by you or by the Board of Education, or the administrative staff prior to 1954 in connection with the possibility of desegregating the school system of the District of Columbia?

A As the records will show, very great amount and extensive amount of preparation for desegregation took place, certainly within the period I was in Washington, and I suspect even before that. We have, as an example, the preparation of the Handbook of Education which was undertaken early in 1949. I was in charge of the project. This is a concrete example of an emphasis upon developing human relations

and preparing for change if this should occur. How much ~~more~~ detail do you want me to go into?

DEPUTY CLERK: Defendant's Exhibit No. 2 for identification.

(Defendant's Exhibit No. 2 was marked for identification.)

BY MR. REDMON:

Q Dr. Hansen, I will hand you what has been identified as Defendant's Exhibit No. 2 for identification and ask you, sir, if you will describe that booklet?

A This is a booklet called Handbook on Education and Curriculum Guide, published and distributed in print form in 1953, prepared by the Committee on InterGroup Education in the Department of Curriculum Committee which was my responsibility to develop and organize the project.

The purpose of the handbook was to make available to all teachers concepts of intergroup education. Now I don't know how much of this you want me to read, but I think the purport of it is described and the philosophy was for intergroup education. The aim of the intergroup education is to develop the consciousness of contributions, and basic unity of all ethnic, racial, social, and economic groups which enrich the American way of life, and you could go on -- why

is group education important? This is a message to the teachers and people in the field -- belief in dignity and worth of every human being is essential part of American heritage; intergroup education cannot depend solely upon textbooks; it must provide opportunities for harmonious and favorable environment (reading from booklet.)

DEPUTY CLERK: Defendant's Exhibit No. 3 for identification.

(Defendant's Exhibit No. 3  
was marked for identification.)

BY MR. REDMON:

Q I hand you, sir, what has been identified as Exhibit No. 3 for identification, and ask you to identify that?

A This is a facimile of an editorial in the Star, dated 10-13-51. It is headed, "D. C. Educators consider an Eventuality," and the lead sentence is: What would happen in the District if one Monday morning the Supreme Court suddenly outlawed segregated school systems? And reference is made to the handbook, and there is a criminal type picture of me -- maybe this is typical-- with the statement below: His handbook looks ahead.

Q Dr. Hansen, did you conduct any programs involving a combination use of White and Negro teachers in the early '50s?

A We did. One of the indirect things we did in preparation for desegregation was accomplished through the use of television media for teaching children in our public schools. We established programs which were taught by Negro and White teachers and which brought Negro and White children together in the studio, in the classroom. I think reference is made to this in one of the published documents there. It is very interesting for me to recall, if I may personalize a bit, the kind of telephone calls we had received at home.

Q Would you tell us about those calls, sir?

A On one occasion after one of the television shows, a man called my wife and said: I am going to come out and get that Communist, teaching Negro --except he didn't use the word Negro-- children and White children together. We received ~~p~~numerable calls of this kind, not only because of the television programs but because of my participation in various intergroup education activities.

MR. REDMON: Clerk, will you mark this as Defendant's Exhibit No. 4, please?

DEPUTY CLERK: Defendant's Exhibit No. 4 for identification.

(Defendant's Exhibit No. 4 was marked for Identification.)

BY MR. REDMON:

Q I hand you what has been identified as Defendant's Exhibit No. 4 and ask you to identify the article which has been circled?

A I do identify it as a reference to television programs set to combat vandalism, Washington Post, Friday, April 17, 1958.

Q Now, sir, I ask you if you received any criticism or comment from members of Congress during those early years of 1950 as a result of your actions concerning desegregation of the schools?

A Yes, the most vivid criticism centered around the handbook on intergroup education.

MR. REDMON: Clerk, will you identify this as Defendant's Exhibit 5, please?

DEPUTY CLERK: Defendant's Exhibit No. 5 for identification.

(Defendant's Exhibit No. 5 was marked for Identification.)

MR. REDMON: While you are at it, Defendant's Exhibit No. 6.

DEPUTY CLERK: Defendant's Exhibit No. 6 for identification.

(Defendant's Exhibit No. 6 was marked for identification.)

BY MR. REDMON:

Q I hand you Defendant's Exhibit 5, Dr. Hansen, and ask you to describe that article?

A This is a comment allegedly made by the House Appropriations Chairman, John Tabor. This appears in the Post dated February 14, 1953, and the Post report is that Mr. Tabor branded the District School Board's handbook on intergroup education as just a mess and worthless from the standpoint of District of Columbia taxpayers, and Representative James C. Davis of the House District Committee inquired as to whether the propaganda document --and I am quoting here the statement attributed to Mr. Davis, I quote: "As a part of the propaganda drive toward integration of Negro and White students in the District of Columbia schools." And there is some talk about suspending budgets, but apparently this was given up.



Q Defendant's Exhibit No. 6, Dr. Hansen. (Hands Dr. Hansen document.)

A This is a Washington Post article dated Sunday, February 8, 1953, headed: Davis assails book by school officials to effect integration. Reference here is to the invitation extended by the Board of Education to District residents to state their views on ending racial segregation. I make the point of the fact that this point question wasn't whether there should or should not be integration but believing that it was coming the time was to consider what to do about it and how to manage the program. Reference is also made to an action taken by Federation of Citizens' Association and other member groups I am quoting, who, like Representative Davis, have attacked the invitations as premature. But the groups also questioned the hand book which was being printed for distribution. And as in the case of the other article, the reference to the handbook is negative.

Q Dr. Hansen, prior to May 17, 1954, was there being any action taken by the Board of Education or the administrative staff to prepare for the ultimate decision of *Bolling v Sharpe*?

A There was a great deal of preparation of all kinds. Some of it had to do with working with community groups such as the National Conference of Christians and Jews who were closely associated over the years; the American Friends Service Committee who sponsored work shops, and who, with our help, made it possible for teachers and principals to talk about how to effect a merger of the two school systems. There were community committees, some of who met rather behind closed doors. I think I need not point out to the Court that at this time participation in activities of this kind by school officials were held suspect by many people of the community and even then by members of the Board of Education. So there was an extensive kind of participation and planning and talking together of people of religious and ethnic groups, committees, sponsorship of special programs --Washington Fellowship was active in this project. So these activities were going on widely.

In addition to that, workshops were sponsored for teachers. I remember vividly the opening of the first workshop, and this was a hard thing to recall, on intergroup education ever held on school premises, and this considered and the year approximately 1951 or 52, to be a considerable

innovation, if you believe that. University sponsored workshops, and later the school system itself sponsored a series of study groups beginning with the Superintendent's staff of the Board of Education, experts were brought in to discuss practices elsewhere, experiences elsewhere with desegregation, of integrated schools, and a line of consultations and discussions that involved in the last stages of the operation all the teachers in the District of Columbia. These events were prior to the decision of the Supreme Court, May 17, 1954, at a time no one could be sure what the decision would be and yet I think under the able leadership of then Superintendent of Schools, Dr. Corning, and with the support of many groups, extraordinary preparations had been made for the improvement of relationships and for the decision of the Court when it was actually handed down.

Q Did you operate in connection with any of these various groups?

A I was very much involved and seemed to develop my assignment to be the representative of the office in the human relations activities which I have described -- the

National Conference of Christians and Jews, I was a member of the education committee, and in the main perhaps because of my curricula background or whatever, I participated in these activities.

Q Did this participation include a working relationship with members of the staff in the Division 2 schools?

A It involved this particularly in some of the work shops. I remember vividly one of the meetings sponsored by the American Friends Service Group at which time a Negro teacher came to me afterward to say in 40 years of teaching this was the first time that she had met with other teachers on school problems. There was a very grave cleavage which was to some extent ameliorated to some extent by curricular activities -- this was across the board.

A curriculum program of revision, I think, is not necessary to point out, may immediately involve in curriculum committees just a few hundred people altogether because you are working committees, but these were joint committees.

Q Subsequent to the Bolling v Sharpe decision, Dr. Hansen, what part did you play in the desegregation of the school system, to wit, the first five or six months?

A We, at the elementary level, and this is all I can speak for, Miss Lyons and I together, Savoy, had a very close working relationship and had throughout the years, and when the decision was finally made and the Board of Education just seven days later --eight days later-- set up to be one of the most what I considered/a statesman-like policy/declarations ever to be made in American education, that beginning at once children would be assigned to school not on race or any other ethnic, religious characteristic, but in relation to residence. This required an immediate administrative action to reconstruct the school boundaries. We did this in elementary schools by bringing together principals of Negro and White schools on a hot June day, saying to them, your job now is together draw boundaries which will take the children to the schools nearest their homes and which will replace the separate layers of boundaries of Negroes and White children.

It was a very interesting and thrilling thing to see these fine people for the first time in their history -- unless they come from schools which were not segregated-- working together with a minimum of difficulty in establishing the boundary lines which were then to be effective the following September. This was the beginning of the operation.

MR. REDMON: I will ask this be marked Defense Exhibit No. 7 for identification.

DEPUTY CLERK: Defendant's Exhibit No. 7 for identification.

(Defendant's Exhibit No. 7  
was marked for Identification.)

BY MR. REDMON:

Q Did there come a time you had an opportunity to review the effect of desegregation after Bolling v Sharpe, and did you write a manual on the problem itself?

A I was invited by the AntiDefamation League to prepare a summary of desegregation of the Washington school system entitled Miracle of Social Adjustment, taken from testimony I presented before the Davis Committee investigating the public schools in 1956, and so I did then prepare this document.

Q That is identified as Defendants Exhibit No. 7?

A That is correct.

MR. KUNSTLER: For identification?

MR. REDMON: Yes.

Q Did there come a time, Doctor, shortly after or during this period of time when you were called upon to assist or make any presentation concerning the operation of

the District of Columbia school system in any southern community?

A I was invited to come to various meetings in the southern states, some sponsored by school organizations, some sponsored by human relations groups, and I was in all of the states with the possible exception of Mississippi. I was invited there but unable to go.

Q What was the purpose for your invitation?

A To hear about the Washington desegregation process.

Q Was there any reaction by people or members of Congress as a result of your travelling to these southern communities?

A There was.

Q Specifically what were the circumstances?

A The most severe reaction occurred after I visited Atlanta to take part in a TV program. It was the year 1956 or 57 --whatever it may be. This was at the time Atlanta was in great disturbance because as to uncertainty as to the possibility of the schools being closed. We had a very fine time and TV presentation. The next day, or within a short time, I had the misfortune to have to appear before the House District Committee on a proposal to raise teachers'

salaries. And at that time --shall I mention names? It is in the record. I don't like to personalize -- Congressman Davis who of course was from Atlanta, seriously charged me with direlection of duty and questioned my wisdom and suggested I better justify why I would accept an invitation of this kind. I justified it on the ground the Davis Committee had so unfairly attacked the public schools of the District in the desegregation process, that I intended to do everything I could to counteract the misinformation and distortion of this report and the Miracle of Social Adjustment was one of the efforts to do this.

So this was one of the effects of my visit. I was questioned by certain Board members. These are not easy things to have to justify your position, but I think it is quite clear this kind of activity is not universally admired under these conditions.

DEPUTY CLERK: Defendant's Exhibit No. 8 for identification.

(Defendant's Exhibit No. 8  
was marked for Identification.)

MR. REDMON: I hand you Defendant's Exhibit No. 8, Dr. Hansen, and ask you if you will identify it?



A This is entitled, Addendum - Five-Year Report on Desegregation of Washington, D. C. Schools.

Q What is the date, Doctor?

A 1960. It is a publication by the AntiDefamation League, B'Nai Brith, and was written as a 5-year follow-up to Miracle of Social Adjustment. May I reminisce just a bit more?

Q Certainly.

A There was one trip I was certainly proud of in a sense, and that is Oscar Cohen and I --Oscar being the Education Director for the AntiDefamation League in New York-- were invited to Tuskegee, Alabama to open the first human relations workshop this institution ever had, and so in a sense I was early in Alabama.

Q Dr. Hansen, in the 1960 report, or pamphlet, what conclusions did you draw?

A I drew the conclusions that desegregation was beneficial. At this time we were demonstrating an upward trend in educational attainment, that the unification of schools was producing a stronger educational program than the schools had as a separate policy, that we were proving --and I think is still being proven-- that the education of

children is a matter offering maximum opportunity in relation to the needs and not a question of race, that the responsibility of the school service is to establish a school program that has the integrity and the rigor to prepare the young people for participation in a total society.

These are the findings as I judge them to be, reasonable, from our study in 1960.

Q Dr. Hansen, on page 11, I believe there was a short two or three paragraphs on your philosophy concerning education. I wonder if you would read those into the record, please?

A I am quoting:

"Deeper meanings behind the statistics of change are these: (1) the impoverished and destitute people of a nation are forced to crowd into downtown city areas where rooms, apartments, and houses have been vacated by more affluent people who have fled to the suburbs. Housing codes and health laws break under the strain because dwellings in open spaces on the periphery of the city are nonavailable. Residential city in downtown Washington, as most American cities,

has become a mecca for economically and socially handicapped, and a breeding ground for the increase of their problems. Churches, schools and social agencies offer main sources of alleviating these conditions. They cannot, however, strike deeply at the roots of the problem which are primarily, economic, and political in origin.

"(2) To consider the integration of schools as a cause of immigration of such citizens to downtown areas is a defect in analysis. An examination of the problems of every major city in this country will show, like massive amoebas, they are unadjusted, without plan or reason, masses of economically deprived people of every race. In most of these cities schools have been integrated from the beginning. In some, schools are still segregated. The least that can be done for the children of the economic and social ghetto is to provide the best possible education."

Q Is that still your philosophy?

A Still my philosophy.

Q In light of the testimony, Dr. Hansen, which you have just given, are you prepared to answer the question whether or not the track system was instituted as a device to promote segregation in the District of Columbia?

A I am, and with some emotion because they charge me with the motive of wanting to, I believe is an injustice to me as an individual. The purpose of the ability group, as we have envisioned it here, is one that has really deep roots in its origin. The first and most important is the concept in American education which is now 30 years old, that every child must have an opportunity to 12 years of educational growth, that the schools cannot be selective. The older schools ruled out the unresponsive child, high schools were selective, and the graduates from these high schools distinguished themselves because of the selective process. There was really a one or two track program in the old time high schools. The concept now is that there must be a place and an opportunity for every child. And

because of the differences in people, differences are not racial in character, but simply inherent in conditions of human life. There must be variations in curriculum offering. To ask a youngster, for example, who has extreme difficulty with a simply mathematical process to meet the challenge of algebra, geometry and trigonometry, is ask that youngster to carry an impossible load. He can't respond to it. The effect of this upon him is that he becomes alienated from the class, he drops by the wayside. There have been actual instances where youngsters couldn't respond to the educational opportunity in a given class, were told by teachers to sit in the back of the room and do something else. I am not blaming the teachers for that because I have had enough experience in classroom instruction myself to know if you have classes that are not grouped within a reasonable range you are going to have to make a choice of teaching down the middle of a group, ignoring the bright and ignoring the slow, giving your attention to the very responsive, bright youngster. And believe me, this is what has gone on in American education for too long, and this is one reason sometimes teachers favor ungrouped classes, because then they could get the excitement of the response of two or three bright kids and the unfrustrated because they can

either deliberately or unconsciously neglect those who don't respond.

We now have over 90% of the youngsters between ages of 14 and 17 in high school around the country. In the 1900's this was 8 or 9%. So the roots of the ability grouping program which we are working with and which is evolving in American education are in the philosophy there must be a place in school for every child through 12 years.

Now, the second reason for my conviction that something specific and planned needs to be done is this: as head of an English department with responsibility for guiding the English instruction of the children in a large high school in Omaha, Nebraska, I early discovered you can't put a slow reader into a traditional college preparatory class and expect anything to happen, that you can't improvise, you have got to have some planning.

As a high school principal, when I took over I resorted to improvisations because I had not gotten to the point of time of developing across the board programs but we found children we were working with in our slow moving English track going into regular classes in history and floundering and being unable to succeed. I know this because

of the feedback from teachers --can't teach this child to read; how can I teach him history, or math? So it occurred to me, it occurred to me then and I still believe it, that a program for children with special learning problems must be planned. Leave it to the improvisation of counsellors, principals who try to set up little classes or this body of children who are failing in all classes. You get an effort to achieve what we are trying to achieve, but you are getting it in a disorganized and unplanned way.

So all that we have said in terms of basic curriculum is this, look, we are going to have children in our high schools --and I submit to you they exist in every high school no matter how affluent a community-- for whom specially geared instructional programs must be planned and for whom teachers with special training must be developed, that you cannot expect them to succeed and to swim in the deep waters of the traditional educational program. Therefore, there must be attention focused on the problem of the education of the retarded child, there needs to be attention to curriculum development, to the preparation of teachers, to developing technologies of teaching which will strike responses from these children. These are philosophical basis of what has come to be called the track system in Washington and these philosophies have existed in my mind before I took over the

operation of the senior high schools in 1955.

Q Dr. Hansen, in line with your philosophy which you expressed in the pamphlet dated 1960, some considerable discussion took place on Monday during your testimony concerning your views as to what has to be done to promote, I believe the word was meaningful integration, and having read the Washington Post yesterday, I do have some reason to believe that you should reiterate the position which you took concerning the needs of what has to be done in the educational system to promote meaningful integration?

A I'll reiterate the philosophy of which I stated in writing, that a comprehensive integrated educational opportunity for all children is better than one which is highly selective either on racial lines or any other lines. This is simply to say a child who comes through his educational experience in a cosmopolitan high school, children of other races, other background, other cultural experiences, will come through that school with a better preparation for successful management of the problems both within his community, his nation and within the world than the child who is isolated as in a rural district or suburban district, or any other district, contact with children of other background, with other problems. This is, I think, what I must reassert



constantly. Now, to achieve racial integration which is one of the many forms of integration to achieve, sometimes I think it is more important for children to come from poor homes and well to do homes than it is for Negro and White races to come together because there can be more segregation on economic and cultural lines. And I say that for the reason many Negro families --increasing numbers of Negro families-- conduct themselves in such a manner with richness, cultivation, experience that they don't really need to worry about integration but the poor child very often is the one isolated most effectively. This poor child in Washington is predominantly Negro. Poverty is not a Negro monopoly. We have poor White children in Washington. We have poor children all over the country. This is going far afield perhaps from the philosophical discussion.

The advantage therefore, I have explained to be very important. Now, how to achieve the kind of education which will be comprehensive can best be achieved on neighborhood lines if the neighborhoods themselves are comprehensive. What I am saying in essence is that the ideal would be balanced neighborhoods. Neighborhoods with Negro and White

families living adjacent to each other with elements of different economic levels living there as well. This would be the ideal. Out of this would come a natural integrated school. To transport children in order to effect a kind of integration on a permanent basis has an air of artificiality about it which, as I said in the testimony on Monday, will not be successful unless in the case of the integration of the White-Negro child, the White parents are persuaded they must remain in the integrated situation and not move away from it.

We haven't reached that stage yet -- not too much of it. There is some tendency for some White parents to come back into Washington if we could guarantee them safety in the community, outstanding educational programs which will make it possible for children to move at their rates of educational advancement, I think we would get more White parents coming back into Washington. This is one way to achieve this.

To clarify my position and my point of last Monday, the only way we can, aside from this return of White parents, get anything like a racial balance of a Negro child in Washington is to go beyond the barriers of the District line where White children are residing in higher percentages. Mathematically it is impossible to get biracial balance otherwise.

Q What part, sir, do you think the educational administrative group can go towards promoting what you have termed meaningful integration?

A We have the major responsibility of seeing to it that every child is given the kind of education which will stimulate him and move him to the point where he can improve his economic position and thus become more flexible, find it possible to live where he wants to, to buy property where, because he has the money to do it, and housing will become more and more open. Education is a key to this. But this education must contain as much of experience opportunities for children as is possible for an educational institution to supply. These must be opportunities for visiting, for exchange.--We have tried some minor opportunities of exchange with suburban schools, travel outside the district, putting him on buses. You can use busing for this and we are using it more and more as a technique to get the child out to an expanded, widening environment. This must be a part of our program. We must bring people into participate in the teaching process who can also broaden the base of understanding of the people and this we are doing to the extent we can and need to do more of it. So we have the responsibility of doing what

we can to overcome the limitations of restricted living in a ghetto community.

Q Dr. Hansen, one more point: is there any reason for being justified in attempting to compare an urban school system with a suburban school system in terms of variables of schooling, ability of children, teaching, etc.?

A Yes, I suppose there is within limit, if you know exactly what you want to compare. I am sure my friends and colleagues in the suburbs would not take the position because our test scores have X points above the national norms, and yours are below the national norms, therefore we are doing a superior job of teaching and you are doing a poor job of teaching, I am sure you wouldn't say, but what they will say and what I will say is what happens to children when they are in school is what counts. We have children coming into our schools who are almost inarticulate/ that is, they have no capacity for total verbalization. Before these children can be taught how to read they have to be given opportunity to learn to speak. This is quite different from a child who comes from a family where there has been a great deal of verbal exchange almost from the time the child is in the cradle, who can speak fluently, who can distinguish words,

reads, because the family experiences. Now, I maintain and have said this to the teachers: you take the inarticulate child and you get that child to talk. This is a contribution for him that will measure your effectiveness as a teacher. You are not going to be measured by whether or not that child can read in any particular grade. You are going to be measured by what progress that child has made while he is under your jurisdiction. And I have the conviction that very often/a highly dedicated teacher you will find some of the most outstanding teaching going on in areas of the city where by normal measures of achievement standards we would say that school is not doing a good job. This has to be a relative question in the answering of it.

Q Thank you, Doctor.

(At this point there was a change of reporters.)

## REDIRECT EXAMINATION

MR. KUNSTLER: Your Honor, at this time I would like to offer into evidence L-17 which was marked for identification by the plaintiff, but was inadvertently not offered. I have spoken to corporation counsel and there is no objection. This is the new policies and procedures for administration.

THE COURT: Let L-17 be admitted.

(Whereupon, Plaintiff's Exhibit  
No. L-17 for identification was  
admitted into evidence.)

BY MR. KUNSTLER:

Q Now, Dr. Hansen, just to clear up one thing in my mind. Did I understand in your answer to Mr. Redmon's question about the model school budget that you indicated that it was, I believe you said, a five year budget projection when you presented it to Congress and Pucinski?

A That was not my answer. The statement I made was that it would seem to me that as much as a five year span would be necessary to realize these things, to get the buildings under construction that we would need for the new programs. This is what I said.

Q Well, as I understood it, this was for a single

year, the fiscal year 1967?

A If we expend that money this next year to build these buildings, this would be the kind of budget we would like to have, yes, sir.

Q That is what you consider, this budget is what you consider necessary for the fiscal year 1967 if the money were available for you?

A Based upon that year's needs, yes.

Q To bring the system to where you wanted it, is that correct?

A That's correct.

Q Now, just a few words about the budget. In answer to a question put to you by Mr. Redmon, I understood that you indicated that the budget that you submitted to the Board of Commissioners for what you called taking into consideration the realities of the situation, is that correct?

A That's right.

Q The realities of the Board of Commissioners and the realities of the Congress and the Appropriations Committee, is that right?

A These are responsible budgets.

Q And I think you indicated that you were under a

compulsion to submit what you called a balanced budget, is that correct?

A This is the Commissioner's responsibility -- not mine.

Q That's right, and the District of Columbia budget had to be what we would call a balanced budget, is that correct?

A The terminology there needs to be clarified. The Chairman of the House District Committee repeatedly admonishes the Commissioners to submit a balanced budget.

Q Yes, sir.

A The Commissioners submit a balanced budget<sup>\*</sup> which takes into account expected revenues or say a higher Federal contribution, or a new tax revenue, et cetera, et cetera. Do I make that clear, that the Commissioners present a balanced budget which is contingent upon certain revenue actions being taken.

Q Is it not true, Dr. Hansen, that there is no such thing as a balanced budget with reference to the District of Columbia, that there is always an open end which is the amount of the appropriation from the Congress?



A This is one of the vague, this is a vague area in budget patterns. I am sure that the Commissioners have to be concerned about this, but they normally ask for certain appropriations for the Congress to approve and whatever that figure is, to that is added what we consider to be a revenue source and that revenue source comprises the total amount of expected revenue.

Q Well, may I suggest to you that there are some revenues which the District of Columbia can forecast fairly accurately which are tax revenues, is that correct?

A That's correct.

Q Yes --

A Now, I understand you, that is correct.

Q But the item it cannot forecast at all is what the Congress will appropriate to add to those figures in order to make up the total budget of the District of Columbia, is that not correct?

A Well, I believe they can make a reasonable estimate. We are reasonably sure, for instance, that Congress would reappropriate the amount appropriated the preceding year.

Q In other words, you know of nothing to prevent Congress from appropriating any amount for the District of

Columbia, is that correct, that it desired?

A If Congress should so desire, indeed.

Q So theoretically, if you want to ask for say your model budget and that was to be presented to the Commissioners and included within the whole District budget, there would be nothing to prevent Congress, assuming that the District Commissioners approve the model budget, appropriating the amount -- forgetting the realities of the situation -- to fill out that budget amount?

A There would be nothing that I could see that could prevent it -- legislatively.

Q Legislatively?

A Yes.

Q Now, you indicated in response to questions by Mr. Redmon, and I am referring you to Defendant's Exhibit No. 1 for identification now, that you had something which is called innovations in instruction which was providing set in programs throughout the District of Columbia which you conceded to be extremely helpful to the students, the pupils going to school here, is that correct?

A That's correct.

Q Do you remember the date of the pamphlet "Innovations in Instruction"?

THE COURT: Well, do you have it?

MR. KUNSTLER: I don't find it, Your Honor, and that is why I am asking him. Perhaps you can find it, Doctor.

THE WITNESS: Well, the application of the pamphlet is for the preceding year. If we don't have a date on it, then we are very poor publishers.

BY MR. KUNSTLER:

Q Well, let me ask you this --

A We don't have it -- oh, yes, 1965.

Q 1965?

A Yes.

Q That is the first issue of this particular document?

A The compilation of the documents, of the capsules, the first compilation of the capsule.

Q Now, in view of what you have stated about these programs, is it not true, Dr. Hansen, that there are some areas of the elementary school system where there are significant numbers of children not attending kindergarten because there is no space in the kindergarten for them?

A That is an oversimplification.

You are right that the enrollment in the first grade runs as much as 40 to 50 per cent higher than the enrollment in the preceding kindergarten -- this is a fact.

Now, whether the children do not appear for enrollment because of lack of space or in relation to other factors, we don't know.

In recent years we have made a special effort to persuade the mothers, particularly, to bring their five year old children to kindergarten. If we don't have space for them we will put them on a waiting list and then we will make a maximum effort to find space for them. But the answer is that no one knows exactly why they don't appear.

Q Do you know the number of children on your waiting list for the year 1956 to 1966?

A Yes -- it varies. In 1965 I think we have gotten down to something under 100 during the course of the year.

Q Is there any waiting list as far as you can recall for kindergarten in any of what we call the predominantly white elementary schools?

A No.

Q So it is in what we call a predominantly negro elementary schools, is that correct, where you have the waiting lists?

A Yes, yes.

Q Well, you mentioned the program at Spingarn High School and as I understand it, Spingarn is predominantly a negro high school, is that correct?

A That's right.

Q And you indicated you had a special program there, as I understand it, for dropouts where they would come in at certain hours of the day, three o'clock on for special instruction, is that correct?

A That's right.

Q Do you know how many people are involved in the Spingarn program?

A The attendance is in the neighborhood of 700 to 800 at the peak. I believe the number that graduated this year from Stay School -- we call it Stay, it is not Spingarn. It has its own identity and its own staff --

Q I understand.

A 149 received diplomas.

Q Are these the equivalent of high school diplomas?

A They are the high school diplomas.

Q They are the high school diplomas?

A Yes.

Q How, does the Armstrong Center give any sort of diploma?

A If the student completes the requirement of graduation from the Adult Education Program he receives a high school diploma from the Adult Education Section.

Q That is the equivalent of a high school diploma?

A That is the high school diploma.

Q It is the high school diploma?

A Yes.

Q Do you know how many are involved -- could you give me figures as to the Stay School and the Armstrong dropout children?

A I believe somewhere in the records we have got a paper on that.

Q Well, I would take an approximation if you have one.

A I would like to check this -- I don't like to approximate it because I don't have a guideline figure in mind, but if a figure of 200 would be sufficient -- I would

prefer to check it if you don't mind.

Q All right. We will leave that out. I think it could easily be procured.

A Yes.

Q And you can fill that in with the cooperation of the corporation counsel.

A I would rather submit an accurate statement.

Q All right and when you are getting those figures will you also supply the figure as to how many got diplomas?

A Yes.

Q Now, you also mentioned before the Congress, I believe, that you had children whom you called dropout prones, I think you called them in your phrase, being studied by pupil personnel and I imagine that the purpose of this was to keep the dropout prones from becoming dropouts, is that correct?

A That is correct.

Q Did you know how many people of pupil personnel are engaged in this particular work?

A Well, I would estimate 30 or 35, but here again, to be accurate I would like to insert the accurate figure.

Q All right -- when did this program start?

A This started last January or thereabouts as part of our development of the ESEA Title I program.

Q Now this has, as I understand it, a replacement for the counsellors you formerly had, I believe, visiting the homes in order to determine why the children left school or to prevent the children from leaving school?

A No. This has nothing to do with that program.

Q Oh, this was a --

A This was a completely new and independent program.

Q So is the counsellor program still going on?

A It is still going on.

Q Do you know how many counsellors are involved in that particular program right at this time, now?

A I don't know. I would be unable to answer that, from memory.

Q Well, was the purpose of the visiting of the homes as I suggested, to see about these children, to keep the children from dropping out, or seeing what could be done about getting them back to school?

A The summer counselling program is primarily concerned with keeping a watch and getting the children back in



school in the fall who have either left school or indicated they are going to leave school, that is, not going to return.

Q This counselling program was then a summer program?

A It is a summer program.

Q I see.

A It is a special program, you understand, of short term duration. It has nothing to do with the regular staffing of counsellors in our schools.

Q And this is going on right now during this summer?

A I believe so, but I would want to check that.

Q And would you also provide information as to how many counsellors are involved in this particular work?

A I would be glad to.

Q Now, referring to the Handbook of Inter-Group Education which is your No. 2 for identification, that was published I understand in 1953 and it bears your name, Carl Hansen, Assistant Superintendent in charge of Curriculum?

A That's correct.

Q Was it your testimony, and if so, I missed it, that this is your handbook written by you?

A It was under my direction -- it was written by a

committee under my direction.

Q All right. When the handbook was written, where was it distributed?

A Well, it was distributed in the first instance in mimeographed form to all of the principals and others who might be interested.

What you have in your hand is a printed version which we finally made available in this form rather than in the mimeographed one.

Q At the time it was, as I understand it, then, first mimeographed and then printed and distributed, Washington had segregation instead of desegregated education, did it not?

A That's right.

Q It had Division One and Division Two?

A Yes.

Q And was it distributed to both those divisions?

A That's correct. The members of the committee were from both divisions of the school system. It was a bi-racial committee.

Q At the time this was first mimeographed and then printed, do you recall whether or not you were aware that

a case known as the Bolling versus Sharpe case was presently in the Federal courts?

A I believe this case was not before the Court. I don't know the history of it, but I am sure at the time we began this study in 1949, which was when the committee was first organized, that this case was not before the Federal Court.

Q Well, we are talking about 1953, the date of the handbook on inter-group education.

A And I am giving you the particular date on which we began our work and formed the committee and became active. This book, you see, was not written overnight.

Q I understand. This book has 23 pages, the last three of which are a list of agencies in inter-group education and then an annotated bibliography.

This book is the product of four years, from 1949 through 1953, is it not?

A As I have stated, the book was published first in mimeographed form. I don't want to get into a debat as to whether we were wasting time --

Q Oh, no, I am not implying that. I am just asking you.

A The first publication was in 1951 and it took us almost a year to get it through the Board of Education -- you understand that, do you?

Q Yes, I understand.

A It takes time to get it through the Board of Education and then it was released in this form in 1953.

Q In 1953, if you can recall, Dr. Hansen, was there not a discussion among the school administrators of the District of Columbia about the reasonable possibility of a Supreme Court order on integrating schools in the District?

A There was.

Q And the editorial which you introduced as your No. 3 for identification, from the Washington Star, on October 13, 1951, was an editorial reflecting at least two years before the appearance of the pamphlet, No. 2 for identification --

A Sir --

Q Just let me finish the question.

A Well, I assume you understand that the pamphlet was in mimeographed form in 1951 and this article, this editorial -- what it is based upon is a review of the

pamphlet and its implications.

Q Well, you are quoted in the editorial as follows -- not quoted, but at least it indicates that this is your view and I will ask you whether or not it was: "Dr. Hansen and other school officials felt the adoption of the handbook by the School Board would be a start towards providing a cushion for the shock" -- It says, I think there is a misprint -- "If the dual system falls."

Was that your feeling, if you can recall, in 1951?

A That was part of our objective. We also had another objective which was to improve relationships as they were then, you understand?

Q I understand.

A Human relations is an ongoing problem. It is a problem constantly in education.

Q Now, the shock that you were referring to, Dr. Hansen, was a community shock, was it not, among others?

A You will note that I am not quoted there.

Q I realize that, and I will take your word -- eliminating "quoted", I will ask you if the shock that was referred to here without quoting you, was among other things a community shock about this thing, if it did come?

A Well, I don't recall -- if I had written that article I would have avoided the use of the word shock. Nevertheless, we were realistically aware of the importance of being willing to make the adjustment which for many in the community would be difficult to make.

Q In other words, the school administration, was it not, and it must have been discussed I assume, that there was going to be a severe reaction from certain elements in the community if integration was ordered or came to pass?

A I haven't supposed so.

Q Well, you felt that yourself, did you not?

A I felt it was very important to do everything possible to prepare for the change in advance of the actual change.

Q Now, Dr. Hansen, referring to Exhibit No. 4 for identification, this was a television program to which you were referring and which had to do, as I understand it, with preparing children to avoid vandalism, is that correct? During the summer months.

A In that particular item, yes, but we had continuous, we had five periods of teaching throughout the week in such fields as social studies, music, science, and I make that

A That is correct.

Q And the innovations --

A Except those who participated in the studio.

Q Correct. And did you have negro and white children participating together in the studio?

A We had children together as well as teachers.

Q As well as teachers, and it was to that that the objections came when the people saw the programs, is that right?

A It was to that that I received numerous unflattering telephone calls.

MR. REDMON: May we approach the bench, Your Honor?

THE COURT: Yes.

(Whereupon, the witness stepped down and counsel approached the bench where the following conference took place:)

MR. REDMON: I don't see the relevancy of this testimony, Your Honor. This is redirect examination.

THE COURT: Well, I thought he was just going into what you intend to -- or is he after something else? I didn't think he had, but frankly I don't think we are getting

point, sir, so that you won't limit your thinking to that particular news release.

Q All right, I will indicate the titles indicated according to the release: "Allen City's Flag," "Enjoying Your Neighborhood," "Using Public Transportation," "Enjoying Movies," and "The Man with the Badge," and "Parks for Fun."

Is that correct?

A I would rely on the news release for that.

Q Will you just describe for me, Doctor, how this television program worked. Was it piped into the schools or did the negro and white children band together to view it?

A The project, the program was produced by us -- I happen to have been the fellow who started the program with staff, through the elementary schools preparing several programs which were produced live in the station which was then WMBW and is now WRC, transmitted live to whomever who may be watching, including the children in classrooms where there were TV sets.

Q Well, did the children remain in their own school systems, then, negroes and whites?



anywhere.

MR. KUNSTLER: I will be over very shortly, Your Honor.

THE COURT: I am willing to let him go ahead and put it in and maybe later some relevancy can be shown to it. However, I haven't thought too much about anything we have heard in the last hour or so.

MR. KUNSTLER: I will be over with mine in about 10 minutes, Your Honor.

(Whereupon, counsel returned to the counsel table and the witness resumed the stand.)

BY MR. KUNSTLER:

Q Now, just one word about Congressman Tabor, Dr. Hansen, Congressman Tabor from the City of Atlanta, is that correct?

A From where?

Q From the City of --

A Well, it was Congressman Davis from Atlanta?

Q Oh, Congressman Davis, I am sorry. It was Congressman Davis from the City of Atlanta?

A Yes. And he had two rural counties as well.

Q But it also encompassed Fulton County, which is

the Atlanta county?

A Yes.

Q Dr. Hansen, in your preparation which you have testified to at some length, when you were assisting in preparing both the community and the school system for integration, and where as part of your capacity as the person in charge of the curriculum for both negro and white divisions, division one and two, you would make certain recommendations -- did you suggest prior to 1954 and the decision of the Supreme Court that there be any City-wide testing of negroes similar to the City-wide testing of whites?

A I did not.

Q Was the curriculum, if you can recall, between white and negro divisions, exactly the same?

A The same curriculum was used in both schools as to units.

Q And as far as the efforts with reference to racial situations are concerned, it is my understanding that some of the testimony before the Pucinski Committee indicated that some school administrators as of this date, or as of the date hearing which was in November and January -- October,

November and January going back into 1966 --that some of the people involved in the vocational schools, let me refer to them as in high places in the vocational school officials, were, in answering demands for the placement of people from the vocational schools into both Federal work and private work, were not reporting violations of either Federal law or of the District Fair Employment Laws with reference to the refusal to hire negroes.

Do you have any knowledge of this?

A This was not brought to my attention by the staff.

Q Was it brought to your attention by the Pucinski Committee?

A It was not.

Q Did you read the Pucinski Committee report?

A What I mean, it was not discussed when I was present.

Q No, but did you know what was going on -- did you know that this evidence went in for the Pucinski Committee at all?

A I was not aware of the testimony. I don't know the source of it.

Q Have you checked on this in the school system?

A I have not as yet.

Q Do you intend to?

A I intend to keep as close a watch on employment practices as possible, to even intervene myself when problems arise, but I would have to know about them to do this.

Q Doctor, in your appearance down before the various southern States which you have visited, you were asked questions and you made answers with reference to comparison between negro and white achievement and ability tests in the District of Columbia after desegregation, is that not true?

A I would say no, not explicitly.

You understand my invitations come mainly from negro teacher organizations, human relations groups. I was rarely invited to appear by the power structure in any southern State.

Q I understand that, Doctor.

A I wanted to make that clear.

Q I understand. I was just asking generally.

A In fact, I should change the word rarely. I have never been.

Q Just a few more questions in order to clarify my mind and then I will close the subject. Does the District of Columbia and the Board of Education have combination power?

A The Board of Education -- the District has, the District Government has.

Q Well, to acquire a school site, would you then have to make a request to the District?

A School sites are acquired by the District Government.

Q I see. So the Board of Commissioners would be the one to whom the application would be made?

A That is correct.

Q Now, you have indicated in the last part of your testimony that you are in essence against the separation either of races or of economic groups and it was your opinion that a group of varying cultural, racial and other backgrounds should come together and would make the best educational process?

A That is correct.

Q And I was going to ask you whether you thought the building of a school in an all negro residential area, an

elementary school, would create the separation both by economic grouping and by racial grouping -- the mere face of building it there would?

A No. The school does not create the social conditions. That condition exists.

The people are there -- the children need to be educated and you have to put the school there.

Q But the school would necessarily then perpetuate the grouping.

A The school would reflect the composition of the residents and possible changes and it does, as you know, change. This would be reflected in the enrollment of the school. But the school does not itself produce the condition.

Q Then, one or two questions and I am through.

In your defense of the track system as being not designed to separate the races and I imagine you would say economic groups as well, is that correct?

A That is correct.

Q It would not be a separative device at all, I wanted to ask you whether you ever tried in the District of Columbia school system, or have you given consideration to



team teaching, or the use of honors classes without the track system?

A Team teaching is being tested out in certain schools in the middle school division. May I say here that the team teaching does not eliminate the need for an ability grouping for instructional purposes. It still exists.

Now, your second point was --

Q Honors classes.

A Honors classes -- we have that condition now. Any student from any part of the curriculum who wishes, although he may not want to elect the complete sequence in the honors curriculum, may take honors classes. Do I make that clear? We retain the honors classes in our school system, the principle of developing elective programs for the children who do not wish to complete the sequence in the honors curriculum or do the college preparatory curriculum. We do therefore have ability grouping by the honors classes in our school system.

Q I was thinking of the question of students in the lower track taking courses in another track.

A Well, this is individualized, an individualized kind

of program which we discussed, I think, at length yesterday.

Q Yes, but that is new, is it not -- that is just this year?

A No, this has been going on for years.

Q Oh.

A This practice has been observed here in Washington and I suspect in most other high schools around the country also, that pupils may elect. The only thing that we have done in addition to that in Washington, and I want to make this crystal clear, is to set up a sequence of courses which, if completed, constitutes the completion of the honors curriculum.

Q Well, what I am asking you, just to clarify one point in your testimony today, I understood this to be for this year, the year 1966 -- is it your testimony that the student in the basic or other tracks, basic or general for example, could not take courses in other tracks, cross-tracking in other words, until this year?

A No, this is contrary to the facts. The first documentation in the development of the ability grouping program specified flexibility in electives. This can be documented.

This has persisted.

We have not eliminated the elective system.

Pupils who want to elect honors curriculum contract to complete that series. If they don't want to complete the series, they may elect mathematics in that series, or they may elect social studies in that series, et cetera.

Q No, I wasn't referring to electives. I was referring to electives within a particular track.

A Well, that is what I am describing, Mr. Kunstler -- the relationship of the curriculum sequence has nothing to do with the opportunity for a pupil to elect, shall we say, trigonometry.

Q A basic student would elect or could elect general trigonometry in a general track?

A It would be most unusual for a basic student to elect general trigonometry.

Q Well, let us assume, and I just want to clarify this for the record --

A A student can and often does.

Q And let us say a basic student wants to elect a course in general or in regular track, it is my understanding

that up until this year he could not go into that track at all without cross-tracking.

A Mr. Kunstler, I have said many times and I will say it once more and I will hope that this will satisfy you, flexibility in what we call cross-tracking has existed from the very first of the organization of the track program.

We have also followed a policy of allowing a student to elect a program which he thinks he wants, or which his parents want, even though the record would indicate that he may not be necessarily successful.

We have consistently said that if a child wants to take Latin and it appears that he is not likely to be successful, but if he wants to take it and his parents want him to take it, the principal is then instructed to allow that child to enroll in that course.

Q Well, I don't want to appear stupid here, but I want to ask this just for the sake of accuracy and I would just like to quote from the May 10th, 1966 issue of the Post and ask you if this is true, or untrue: "School Superintendent Carl Hansen said last night he would propose that general curriculum and basic track students be given the opportunity to sample some subjects heretofore reserved

for students in the first two tracks." Now, that is a month and a half ago and I just want to understand. Was that in existence before May 10 of 1966?

A I would like to know the context of that story.

Q I will show you the article.

A Yes. This has to do with some new developments we were attempting to initiate in curriculum formulation which would make it possible, for example, for us to try out the question of preparing a foreign language program, say in French, at a level that could be undertaken by the slow learning child. This is what I meant by sampling.

For example, some of our English teachers have been doing a very splendid thing in introducing to the child in the slower moving groups the essences of the Shakesperian tragedies -- not giving them Shakespere to read, because they could not manage it, but giving them the story and letting them have an acquaintanceship with the ideas, doing this by oral means and by simple presentations.

That is what we are talking about here and this is the direction in which I wanted to get total cooperation so that the children will have some sort of common experience with improved cultural learning at a level of their ability

to respond to it in a given time. This is what I meant by this. We could talk indefinitely about the philosophy of curriculum.

Q Well, just to put it very simply, Dr. Hansen, what I am asking you is whether it now means that a new policy is going into effect that general and basics, the first two tracks, general and basic children may now, in the future, take courses in some other tracks?

A Well, I must repeat myself, Mr. Kunstler, and say that at the very beginning of the program children in any given track were permitted to cross-track.

Q All right.

Now, my last question is just to complete an area that was not completed yesterday. You will remember, Doctor, that I asked you yesterday whether there were any IQ floors or minimums for students to go into vocational high schools?

A Yes, and I promised to get that information, Mr. Kunstler, but I haven't, as I said, been in my office long enough to ask two questions as to what is going on.

Q Well, Mr. Volland, Robert Volland is the Director, is he not, of the vocational training program?

A Yes, he is, in the office, as one of the directors, that's right.

Q And I show you a letter in which he indicates that a 90 plus IQ is required. Would you accept that as a figure for entering vocational high schools?

A I would have to accept this as coming from our expert in the field.

Q Thank you.

MR. KUNSTLER: I would like to offer into evidence as Plaintiff's C-14 this document, Your Honor, and with that I have no further questions of the witness.

MR. REDMON: I have no further questions, Your Honor.

THE COURT: All right, Doctor, you are excused.

THE WITNESS: Thank you, Your Honor.

THE COURT: We will take a five minute recess.

(Witness excused.)

(Whereupon, a short recess was taken.)

MR. ANKER: Your Honor, in case we forget it, may I ask at this point that we be permitted to take away the exhibits overnight.

THE COURT: Yes, you may.



MR. ANKER: Thank you, Your Honor, and I would like to call Mr. Ray Reid to the stand.

Whereupon,

RAY REID

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANKER:

Q Will you state your name for the record, please?

A My name is Ray E. Reid.

Q Is that R-e-i-d?

A That is R-e-i-d.

Q And you are Superintendent of Schools in Arlington County, are you not?

A Yes, I am.

Q How long have you been Superintendent of Schools in Arlington County?

A I am beginning my ninth year in Arlington County.

Q I see. And could you briefly describe your experience and your education prior to coming to Arlington County?

A Well, I am beginning -- I have completed 40 years

of public education in Virginia at all levels including seven years as Assistant Superintendent in the State of Virginia.

Q Thank you.

MR. REDMON: May the reflect the same objection with respect to the testimony of Dr. Reid and the exhibits as made in the face of the last Superintendent for Fairfax County.

THE COURT: All right, sir. Let the record reflect that objection is made generally to all testimony and all documents offered by this witness and let this be overruled.

You may proceed.

BY MR. ANKER:

Q Mr. Reid, you are here pursuant to subpoena, is that correct?

A That is correct.

Q And you are also, pursuant to subpoena, bringing certain documents with you, is that correct?

A That is right, sir.

MR. ANKER: May these be marked in the same R series where we left off.

junior and senior high schools for the period of three years.

It shows both enrollment and the number of pupils who dropped in each of these three years and the percentage.

MR. ANKER: I offer R-30.

BY MR. ANKER:

Q Would you now identify R-33, please?

A R-33?

Q I beg your pardon, R-31.

A R-31 is a table showing the cost per pupil over a period of seven years in two columns, one being cost per pupil on current expenditures not including debt service or capital outlay and the other is the total operating cost per pupil.

Q These figures are related to the entire school system, is that correct?

A This is county.

Q Would you be able to testify, sir, from your own knowledge whether the per pupil expenditures vary to any sizeable degree from one school to another within the school levels -- for example, from one elementary school to another,

or from one junior high school to another, or from one senior high school to another?

A Well, in a general sense there is no general variance of any consequence.

Q Would there be a variance in the order of as much as 50 to 20 per cent -- is that likely?

A No, I think not -- I think not. I think there would never be that much variance. We keep no such accounting and that is the reason I cannot give you that figure specifically.

Q I understand, but to the best of your knowledge, there would be only a slight variance and you cannot give us the precise figure, is that correct?

A That is true, that is true.

MR. ANKER: All right. I offer R-31 into evidence.

BY MR. ANKER:

Q Now, could you identify this document which has been marked R-32, please?

A Yes. These are the test scores listing the names of tests given in Arlington County in the years 1960 through 1965, the grades in which they were given, the national norms,

the grade placement by national norms, the median in Arlington County and the grade placement as a result of the scores.

Q And the name of the test as well as the general subject matter covered is indicated therein, is that correct?

A That is right.

MR. ANKER: I offer R-32.

BY MR. ANKER:

Q Would you identify now Exhibit R-33, please?

A R-33 is a table over a period of six years with one slight exception showing the books per pupil in the case of textbooks for two years, because we don't keep a textbook inventory except for two years, in the case of library textbooks the average number of books, library books per pupil for both elementary and secondary school levels over a period of six years and the attachment of the details.

Q Now, do all of the schools in your system have a library?

A Every school has a central library.

Q And is the library in each case staffed with a professional librarian?

A Yes.

Q Will you please, sir, tell us the extent to which the number of library books in the system are distributed equally among the schools -- in fact, I will put it this way: Is an effort made to distribute them equally among the elementary schools for example?

A Not necessarily equally among the schools, but we are working towards a standard and are making every effort to see that every school reaches that standard. The standard is not one that is necessarily consistent -- that is, it changes from year to year, but our average is applicable, I think, generally to every school.

There may be some little variation, but very little.

Q What sort of standard is that -- is that a State or County standard?

A Well, it may be the American Library Association -- for example, which has a standard, the State of Virginia has a standard and the Accrediting Associations have a standard.

We do not accredit our schools on an elementary level and do not seek accreditation, but the accrediting standards are determined in large measure by the accrediting

agencies and others that have a specific interest -- for example, the Library Association.

Q Thank you.

MR. ANKER: I offer R-33.

(Whereupon, Plaintiff's Exhibits  
R-34 through R-42, inclusive  
were marked for identification.)

BY MR. ANKER:

Q Will you identify Exhibit R-34, please?

A Exhibit R-34 is the total annual construction expenditure in Arlington County with the source of funds -- one we would call the construction fund which is a bond construction fund and shows the bond sources or fund sources, and the other is the general operating budget, with the details on another page, over a period of six years.

Q This would fall in the area of capital costs, would it not?

A That is correct, that is correct.

Q And that would not be included in the per pupil cost, or would it?

A That would not be in the per pupil cost, they are



in the first column, part of them would be included in per pupil costs -- it is the previous exhibit.

MR. ANKER: All right. I offer Exhibit R-34.

BY MR. ANKER:

Q Would you now identify Exhibit R-35, please?

A R-35 is the percent of students who attend colleges and institutions of higher education. This is for the three high schools in Arlington County over a period of five years showing enrollment of these graduates, the number of graduates who, by schools, went on to institutions of higher learning and the percentage.

Q Now, in your high schools, do you have a college preparatory curriculum?

A We have what is substantially that. Our high schools, as you understand, are academically oriented, and therefore they are not divided to the extent that some school systems may be, but it is generally accepted that those who -- the large percentage of our students would be going on and would be preparing themselves for college admission and addressing themselves to those requirements and taking advantage of the courses that are offered to best prepare

them.

Q When you offer a program for these college-bound students, do you also offer a program for students who do not desire to go to college?

A Well, for all practical purposes, it works out that way, but specifically, no.

Q In other words, you offer courses which students may elect to take -- is that what you are trying to say?

A That is correct. The secondary school program and the senior high school program would probably have courses, up to 140 or 150 different courses and the student elects whatever ones they want according to their ability, their interests and their needs and their desires, but it is generally conceded, and they are generally directed to take certain groups of courses if they are going in certain directions. The emphasis would be according to their estimate of their ultimate intentions, whether it would be college-bound or whatever.

Q And this is a decision that is left to the student or is it a decision that is made by the school itself?

A Well, it is a decision that is generally made, we

think, on a cooperative basis, because we have what we believe to be a very effective counselling service, high school guidance counsellors and we believe this had to be a joint decision made by the parent, the student, with the advice of the counsellor in our counselling service.

Q But if, over the advice of your counselling service, the student insisted upon taking a college preparatory program or course which in your judgment or the judgment of the counsellor he is not able to perform, would he still be given the opportunity to see whether or not he could make out in that particular course?

A This would depend entirely upon whether he could meet the requisites for such a course. In mathematics, for example, there are prerequisites to certain courses, in the case of foreign language this is true and it is also true in a great many of the areas -- there are prerequisites for enrollment into a certain course, but generally speaking, if he can meet those prerequisites, they are admitted to the course.

Sometimes it is over or against the advice by the counsellor.

Q When you speak of prerequisites, I take it you mean prerequisites in terms of prior courses that the student must have taken?

A Right, right.

Q And you are not speaking of IQ's or aptitudes prerequisites, are you?

A No, we don't indulge ourselves much in this IQ business.

C I show you now the next exhibit --

MR. ANKER: I would first like to offer R-35 into evidence, Your Honor.

BY MR. ANKER:

Q Now, would you identify R-36, please?

A R-36 is a very small table showing the pupils per teacher and pupils per classroom ratios in a given year. This is a pupil-teacher ratio on the one hand and the number of children in each classroom on the other.

Q And is that exhibit broken down by schools?

A No, this is only broken down by grade levels, elementary school or kindergarten, as a matter of fact, elementary, secondary and ungraded.

Q Is there a great variation or a small variation in the ratios from school to school?

A Well, not a great variation. There is some variation, of course, from school to school, depending upon the size of the school. This is larger because in some instances smaller schools, well, the smaller the school, the smaller the ratio, or the lower the ratio, but there is no great variance from school to school.

Q Is there any effort made by yourself or the school administration to maintain as nearly as possible an equal ratio from one school to another?

A We don't attach a great deal of importance to the pupil-teacher ratio.

We address our efforts to the elimination of what would be considered oversized classrooms and we direct our efforts in this direction rather than to the lowering of the pupil-teacher ratio, per se. This is an average and averages are always very dangerous. They don't tell you anything except there is as many above as below.

Q Well, what you are saying is that it is a mathematical thing that doesn't mean very much and what you are concerned

about is the size of the classes?

A This is true.

Q And do you try to keep the size of the classes as nearly equal as possible?

A We try to keep them below a given figure. Speaking generally, this would create a situation in which it would be pretty well the same throughout our school system.

MR. ANKER: I offer Exhibit R-36, Your Honor.

BY MR. ANKER:

Q Now, I show you R-37 and I ask that you identify that document?

A This document, R-37, is a table showing the number of libraries in the school system and the nature of the library facility.

I think we summed this up with the statement that we made a few moments ago that each school has a professional librarian and a central library which serves as an instructional resource center for the students and the teachers.

Q Thank you.

A This is true of all levels.

MR. ANKER: I offer R-37.

elementary, junior high school and senior high school.

I am not sure how meaningful this is, because we have buildings that are quite old and we have made four or five additions to them, but this is the average.

MR. ANKER: Thank you. Your Honor, if I did not offer R-28, I do so now, it has been identified.

THE COURT: It was offered and admitted.

MR. ANKER: May I have it marked as being received, Your Honor?

THE COURT: Let the record show it has been admitted.

(Whereupon, Plaintiff's Exhibit  
R-28 was admitted into evidence.)

BY MR. ANKER:

Q Mr. Reid, I want to ask you one additional question on this matter of per pupil expenditures. Would you explain how it happens that the per pupil expenditure from school to school is approximately the same. Is an effort made to reach that result?

A Well, we don't keep any accounting on a school basis. Therefore, we have no way of knowing exactly whether there is any variation, or whether there is not.



Q When you speak of prerequisites, I take it you mean prerequisites in terms of prior courses that the student must have taken?

A Right, right.

Q And you are not speaking of IQ's or aptitudes prerequisites, are you?

A No, we don't indulge ourselves much in this IQ business.

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Q Is there a great variation or a small variation in the ratios from school to school?

A Well, not a great variation. There is some variation, of course, from school to school, depending upon the size of the school. This is larger because in some instances smaller schools, well, the smaller the school, the smaller the ratio, or the lower the ratio, but there is no great variance from school to school.

Q Is there any effort made by yourself or the school administration to maintain as nearly as possible an equal ratio from one school to another?

A We don't attach a great deal of importance to the pupil-teacher ratio.

We address our efforts to the elimination of what would be considered oversized classrooms and we direct our efforts in this direction rather than to the lowering of the pupil-teacher ratio, per se. This is an average and averages are always very dangerous. They don't tell you anything except there is as many above as below.

Q Well, what you are saying is that it is a mathematical thing that doesn't mean very much and what you are concerned

about is the size of the classes?

A This is true.

Q And do you try to keep the size of the classes as nearly equal as possible?

A We try to keep them below a given figure. Speaking generally, this would create a situation in which it would be pretty well the same throughout our school system.

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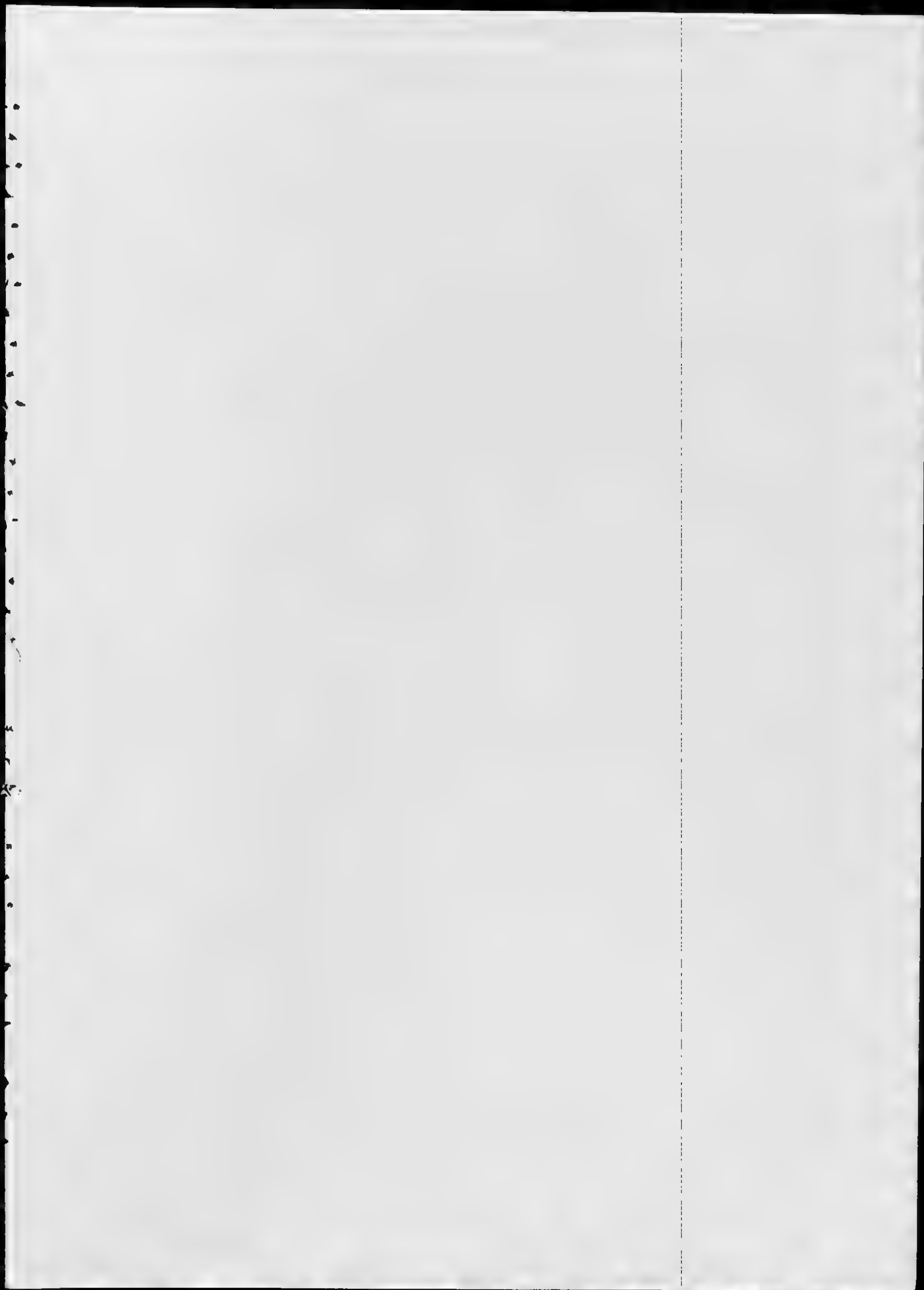
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I think we summed this up with the statement that we made a few moments ago that each school has a professional librarian and a central library which serves as an instructional resource center for the students and the teachers.

Q Thank you.

A This is true of all levels.

MR. ANKER: I offer R-37.





elementary, junior high school and senior high school.

I am not sure how meaningful this is, because we have buildings that are quite old and we have made four or five additions to them, but this is the average.

MR. ANKER: Thank you. Your Honor, if I did not offer R-28, I do so now, it has been identified.

THE COURT: It was offered and admitted.

MR. ANKER: May I have it marked as being received, Your Honor?

THE COURT: Let the record show it has been admitted.

(Whereupon, Plaintiff's Exhibit

R-28 was admitted into evidence.)

BY MR. ANKER:

Q Mr. Reid, I want to ask you one additional question on this matter of per pupil expenditures. Would you explain how it happens that the per pupil expenditure from school to school is approximately the same. Is an effort made to reach that result?

A Well, we don't keep any accounting on a school basis. Therefore, we have no way of knowing exactly whether there is any variation, or whether there is not.

We know that there is a difference in the total cost of instruction, for example, from one school to another, sometimes because it may work out so that we have in one instance a school that will have some inexperienced teachers and therefore the salary scale will be lower and on the other hand there may be a school where there are more experienced teachers and therefore the instructional program will cost more. This is the major item of difference -- supplies and equipment, et cetera are all handled on a County level basis by requisition and there is no difference that I am aware of.

Q Are you aware, sir, of the school tax rate in Arlington County -- do you happen to know that?

A For 1966 it was, and if you are going to use this figure it ought to be checked because I am not sure of it, 257, I think was the figure on real property for 1967, but we are operating on a cash appropriation so it doesn't have any bearing on the tax rate. It is a single tax rate in the County.

Q It is a single tax rate?

A Yes.

Q In other words, there is no school tax per se?







(Whereupon, counsel returned to the counsel table.)

THE COURT: Let Plaintiff's Exhibits R-29 through R-42 be admitted into evidence with the objection that counsel has already recorded.

(Whereupon, at this point, all counsel on behalf of the corporation were excused from the courtroom with the exception of Mr. Earnest.)

(Whereupon, Plaintiff's Exhibits R-29 through R-42, inclusive, were admitted into evidence.)

MR. ANKER: I call Mr. Earl C. Funderburk.

Whereupon

EARL C. FUNDERBURK

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANKER:

Q Will you please state your name and occupation, please?

A Earl C. Funderburk and I am Divisional Superintendent of Fairfax County Schools.

Q And how long have you been Superintendent?

A I am beginning my sixth year, sir.

Q Could you briefly describe your work prior to that time?

A Yes. This is my 34th year in school work. I have held positions as teacher, principal and superintendent in three North Carolina school systems prior to coming to Virginia.

Q And you are here today pursuant to subpoena, is that right?

A Yes, sir.

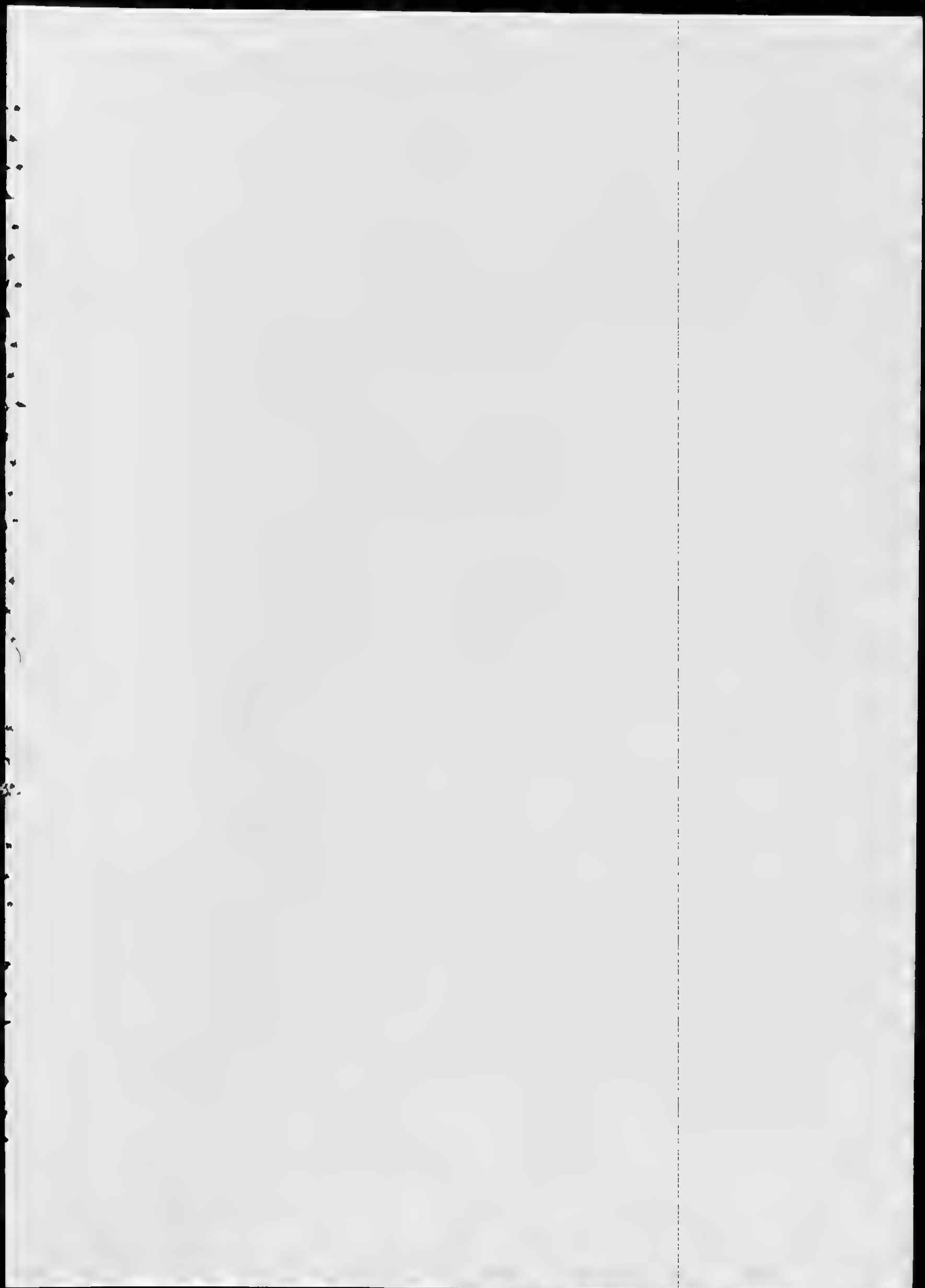
Q And you have also produced in response to that subpoena a number of documents, is that correct?

A Yes, I have.

MR. ANKER: May these be marked in the same series, Your Honor.

MR. EARNEST: Your Honor, at this time may the record show the objection goes to these documents.

THE COURT: Let the record show that there is general objection to the testimony of this witness and to all documents that will be offered in connection with his testimony.





A R-44 shows the dropout rate in our school system, the number of dropouts and the percentage for the years 1961 through '65-'66.

Q And in terms of percentages, does the dropout rate show any trend either upward or downward?

A It actually shows a trend downward, sir, but the average would be about the same.

Q What do you mean that the average would be about the same?

A Well, the children, there was a 3.0 figure in 1960 to 1961 and it runs all the way through to 2.2 for the last two years, but the trend is down.

Q I see.

MR. ANKER: I offer R-44 into evidence.

(Whereupon, Plaintiff's Exhibits  
R-45 through R-54, inclusive,  
were marked for identification.)

BY MR. ANKER:

Q Would you please identify R-45 for the record?

A R-45 shows the per pupil expenditure per year starting with 1960 to 1961 through 1965 to 1966.



This is broken down into two columns, firstly showing the operating costs only and the second column shows the operating costs plus capital outlay and debt service.

Q That is not broken down by schools?

A No, none of our figures are broken down by schools. We operate on a county-wide basis.

Q Do you know whether the figures, if they were broken down by schools show a great variation from one school to another?

A No, they would not except in places where we have some pilot classes going on, special education classes, or maybe where the variation would be more dramatic.

MR. ANKER: I would offer R-45 into evidence.

BY MR. ANKER:

Q Would you identify R-46, please?

A R-46 is the various test scores given during the years 1960 to 1961 through this current year. They are identified by subject matter, by IQ's, and the series of tests and various names -- also an analyzation by the George Peabody College of the scores.

MR. ANKER: I would offer R-46 into evidence.





Q What would your explanation be for that, sir?

A The explosion of population.

MR. ANKER: I would offer R-48 into evidence.

BY MR. ANKER:

Q Would you please identify R-49 for the record?

A R-49 shows the percentage of students who attend colleges or institutions of higher learning during the years 1961 to 1962 through '65 to '66.

Q Do your high schools provide a college preparatory curriculum as distinguished from the other curriculums which are not college preparatory?

A Not exactly. The great percentage of our students go to college and naturally we are geared toward college prep, but we also have vocational work which is elective.

Q Are there any prerequisites in terms of aptitude for entrance into the college preparatory curriculum or course?

A Well, yes, we have groupings, but a child or a parent that insists that a child go into this work, we do not deny that child the opportunity. We try to counsel with them and get them in the particular area we think they would



be most successful in.

Q And you accomplish this by counselling?

A Yes.

MR. ANKER: I would offer R-49 into evidence.

BY MR. ANKER:

Q Would you identify Exhibit R-50 for the record?

A R-50 is the pupils per teacher based on the average data on membership during the years 1960 to 1961 through 1965 to 1966 broken down by elementary intermediate and secondary.

Q These are not broken down by individual schools?

A No, it is not.

Q If it were broken down, do you know whether the figures would be approximately equal within the various categories as between the various schools in each category?

A Yes, it would be virtually the same.

Of course, there are exceptions. We set a standard but we do not attain that ratio in every school because of the size of the school.

We are concerned more particularly with keeping the ratio so that we do not overload classes. This is our main purpose. However, we have a standard to meet within the

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A Yes, it would be virtually the same.

Of course, there are exceptions. We set a standard but we do not attain that ratio in every school because of the size of the school.

We are concerned more particularly with keeping the ratio so that we do not overload classes. This is our main purpose. However, we have a standard to meet within the



accreditation agency procedures.

MR. ANKER: I would offer R-50 into evidence.

BY MR. ANKER:

Q Would you identify R-51 which seems to have two parts to it?

A R-51 shows our salary scale beginning with the year 1960 to 1961 and through -- well, our estimated or projected one for 1966-67.

Q I think that there is something at the bottom. There is something else stapled to that exhibit as part of it?

A Oh, yes. That is our certification requirements which are set forth by the Board of Education of Virginia, this is an attachment. Our teachers are certified and have to meet State certification standards.

Q That would be the same book that also applies to Arlington County?

A This is a book -- it is for every system in the State of Virginia, every school system.

Q And the teachers' salaries are broken down by degree attained, academic degree and academic credits, is that correct?

A We have a non-degree teacher category and they are few and degree teachers and these are certified by the State and the scales are set by degree. In other words, an AB degree would have one scale, the Master degree would have another, Master's plus 30, and the Doctor have separate scales, so it is equivalent.

Q You don't have any tests standard?

A No.

Q By which you separate teachers into different categories?

A No.

Q It is strictly on the basis of their educational achievement and their years of service in the system, is that correct?

A Yes.

MR. ANKER: I would offer R-51 into evidence.

BY MR. ANKER:

Q I show you R-52 for identification and ask you if you would identify that for the record, please?

A R-52 is our Fairfax County School Personnel Policy and Procedures that we go by.

**DIRECT EXAMINATION**

BY MR. ANKER:

Q Would you state your name and occupation for the record, please?

A My name is Paul A. Henry and I am Assistant Superintendent of the schools for Business and Finance in Montgomery County, Maryland.

MR. ANKER: Let me say at this point that we attempted to subpoena the Superintendent of Schools from Montgomery County, Your Honor, but he was out of town, I believe at the time and we discussed the matter with counsel for the school system, and, by agreement between counsel, Mr. Henry is here and has agreed to come today in place of the Superintendent.

THE COURT: Very well.

MR. ANKER: I think he can provide us with the testimony that we need.

THE COURT: You may proceed.

MR. ANKER: May these be marked for identification, please?

(Whereupon, Plaintiff's Exhibits R-55 and R-56 were marked for identification.)

BY MR. ANKER:

Q Doctor, perhaps I should ask you, if you will please, how long you have been Assistant Superintendent for Montgomery County?

A I have been Assistant Superintendent since July 1, 1965. Prior to that time I held different administrative jobs in the County school system.

I have been employed there nine years.

Before that time I was in education, employed in education, in the State of Pennsylvania.

Q Thank you, sir.

Now, you have brought with you, have you not, certain documents that were requested?

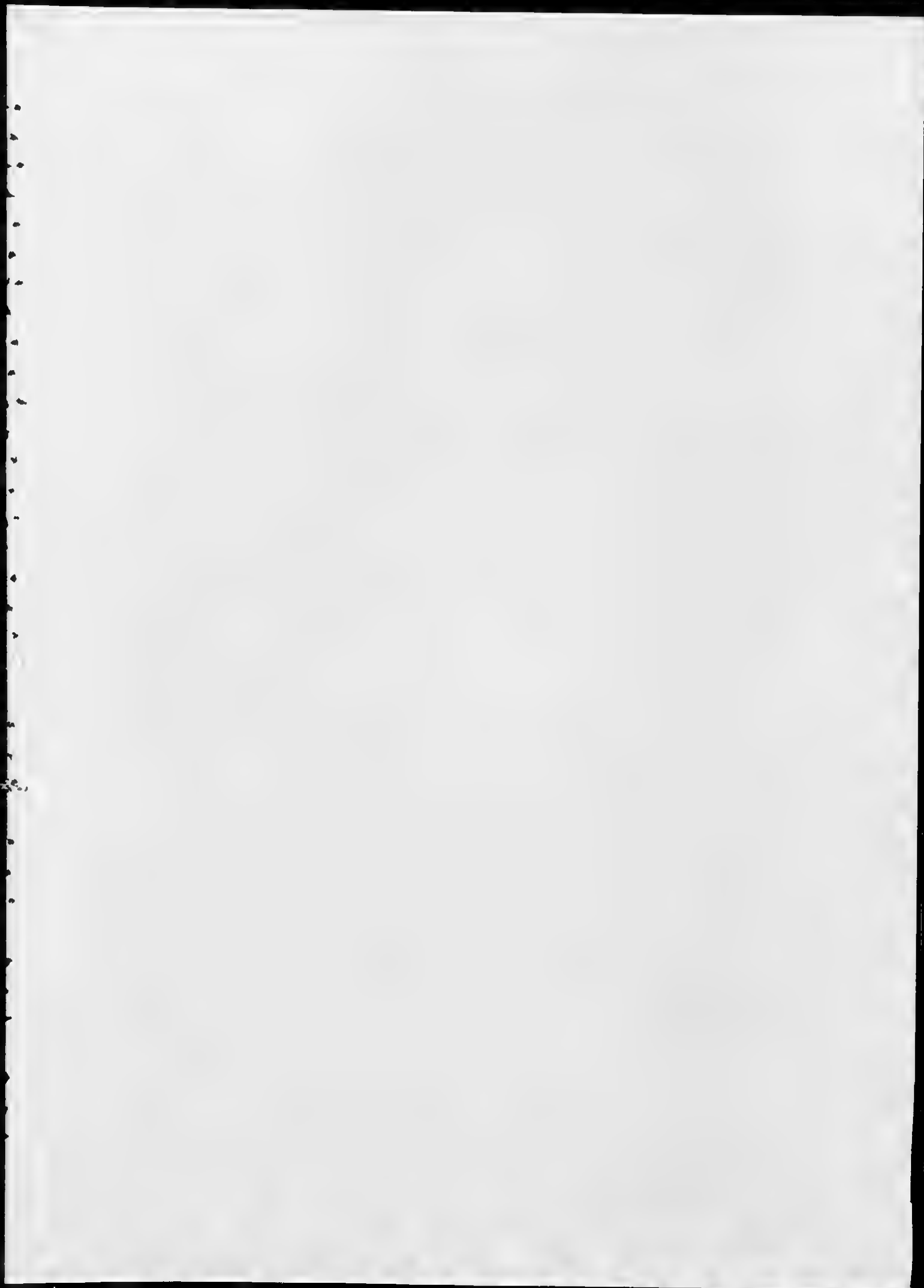
A Yes, I have.

Q Would you identify for the record the document which has been marked as Plaintiff's Exhibit R-55?

A Document R-55 is a summary of selective data on desegregation as of September the 30th in the year 1962-63 and on through '65 to '66.

Q Does that document show the number of negroes and white pupils in the respective schools in your system?





Q And the pupil expenditures are not broken down by schools, is that correct?

A They are not.

Q Do you keep records of pupil expenditures by school?

A We do not.

Q Do you have any idea on the basis of your knowledge and experience whether if such records were kept there would be any great variation in the per pupil expenditure for these various categories that are shown on this table from one school to another?

A There would be very little variation.

In fact, since 85 per cent of our total budget, of our operating budget, of nearly \$80 million is comprised of salaries and wages, inasmuch as we have a County-wide personnel hiring policy, and the teachers are assigned throughout all of the County, the figure would not be very variable throughout the County. It is based upon years of service of the teacher, degrees held by the teacher so that I would say there are certain common factors at work that tend to increase the costs.

You will have some variations based on the number of



students in any one given school and in fact with an older school without the larger schoolrooms where we cannot put physically as many pupils in there, it would indicate that the cost per pupil might go up.

Q Would you identify R-58?

A R-58 is a summary of the total pupil-teacher ratio for the years 1945 through 1966.

This is broken down for each of the years, kindergarten, grades one through six -- what we call remedial and special education classes, and then grades seven to 12 in secondary schools and special education in those secondary schools.

Q This does not show the ratios broken down by schools?

A No, sir -- we don't do that.

Q Do you know whether the ratios would vary to any considerable degree?

A Well, you will find with the older school the chances are a smaller pupil-teacher ratio, but we are building larger classrooms today to accommodate multiple types of instructional activity, but substantially throughout the County there is very little variation.





A Yes.

Q But it does cover all of the years?

A Yes.

Q From 1960 to the most recent year?

A Yes, sir.

MR. ANKER: I would offer R-67 into evidence.

BY MR. ANKER:

Q Am I correct, sir, that these will show that the teachers are paid in accordance with the degree they hold and the educational attainment and the number of years of service?

A Yes, that is correct.

Q And you don't have any different rates for teachers on the basis of any tests -- teacher test results?

A No, sir.

MR. ANKER: That is all I have, sir. Thank you very much.

THE COURT: Thank you very much, Dr. Henry. It has been very helpful.

THE WITNESS: Thank you, sir.

THE COURT: Let the record show that Plaintiff's

P R O C E E D I N G S

THE COURT: Good morning.

MR. KUNSTLER: We would like to call Julius Hobson to the stand, but before he takes the stand, Your Honor, I have prepared, because you did not have the listing of exhibits introduced from --the R exhibits-- I have a copy for your convenience and a copy for counsel, and a copy for the Clerk.

I would like to call Mr. Hobson. Mr. Hobson would prefer to affirm.

Thereupon,

JULIUS W. HOBSON

was called as a witness for and on behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KUNSTLER:

Q Mr. Hobson, will you state your full name, please?

A My name is Julius W. Hobson.

Q And where do you reside?

A 4801 Queens Chapel Terrace, Washington, D. C.,

Northeast.

Q Within the District of Columbia?

A Within the District of Columbia.

Q Do you live i n a house or apartment?

A I live in a house.

Q You own that house?

A Yes, I do own the house.

Q You have any children, Mr. Hobson?

A Yes, I have a son Julius Hobson, Jr., and daughter Jean Hobson.

Q Did your son attend the District public schools?

A Yes, he did. My son attended District public schools and graduated from McKinley High School this year.

Q Did your daughter Jean attend?

A My daughter Jean did attend public schools up until a year ago and now attends Gladen School and Camp, a private boarding school in Virginia.

Q Is there any reason why you removed her from the D. C. schools?

A Yes, I removed her from the District of Columbia schools because, one, she did not seem to be learning reading, writing and arithmetic, and she was also placed in a slow group with children much older than she was in Anadon without

and when I found out I removed her.

Q When you say slow group you mean one of the tracks?

A One of the tracks.

Q Which track was that?

A Basic track. ✓

Q When was Jean removed from the D. C. schools?

A From the public school system at the end of the school term before last.

Q That would be 64-65 school year, is that correct?

A I think that is correct. Anyway, she has been in Gladen for one school year.

Q Is that a school for which you pay tuition?

A I pay \$1700 a year tuition.

Q Is your daughter doing well at Gladen as far as you know?

A She is doing much better than in D. C. public schools.

Q Now, Mr. Hobson, would you state for the Court what institution of higher education rendering a degree which you attended?

A I attended Tuskegee Institute and got a Bachelor's degree in 1946, and attended Howard University Graduate School for three years; attended American University School for one year in the field of Engineering and Economics.

Q And do you have any hours toward a PhD?

A I have 72 hours on graduate level and in fact I have 105 hours Economics -- more than enough for a PhD.

Q What is the number required for PhD?

A I think it is 72. I have not been interested in a PhD.

Q What would remain to be done to acquire a PhD from American University?

A I would have to do the language, and pass examinations, and do a dissertation -- probably have to go back and spend one more year in residence because I lost my standing, if I had any, since I have not been there in years.

Q When did you graduate from Tuskegee?

A 1946.

Q When did you attend Howard?

A 1946 -- I entered in the Fall term '46-'47-'48?

Q American University?

A I was at American University in '49, I believe -- '50.

Q Now, you are employed, are you not, by a branch of the United States Government?



A I am employed by the Social Security Administration in the Division of Research and Statistics.

Q Would you describe for the Court exactly what your job consists of?

A I am connected with the collection and evaluation analysis of economic and statistical data. I am a specialist in the area of workman's compensation. I am called a social science analyst and I am on the general economist register for the Federal Government, Civil Service Commission.

Q Would you describe for the Court what your duties are in connection with this occupation?

A Well, I am charged with preparing every year an article for the Social Security Bulletin on workmen's compensation payments and costs. This has to do with what we call workingman's economic social insurance that is published once a year in the Social Security Bulletin.

MR. KUNSTLER: May I have this marked as V-11?

CLERK: Plaintiffs' Exhibit V-11 for identification.

(Plaintiffs' Exhibit V-11  
was marked for Identification.)

BY MR. KUNSTLER:

Q I show you Plaintiffs' Exhibit V-11 for identification and ask you if this represents one of the articles to which you refer?

A Yes, this is New Bench Marks and Workmen's Compensation, written by Alfred Skolnic, who is a senior specialist in workmen's compensation, and says at the bottom, "Prepared with the technical assistance of Julius W. Hobson." I prepared all the charts and tables and designed them.

Q Is one of your major duties the preparation of such charts?

A It is my major duty to gather the data, array them, and design the chart. I do not draw charts but design them and pass them to the graphic analysts and they produce them.

Q Once prepared and passed to the analyst he does the translation to the chart under your supervision, is that correct?

A That is correct.

Q What issue of the Social Security Bulletin is the article t o which you just referred?

A The article I referred to is in June 1962 issue of the Social Security Bulletin.

Q I show you Plaintiffs' Exhibit V-12 for identification and ask you whether on page 38 and following there does appear another such article.

A Yes, this is called "Notes and Pre-Reports, Workmen's Compensation Payments and Costs '62-'63", published in January 1965 Social Security Bulletin and contains an array of statistical tables with data by states and I prepared this table myself and I moved up on technical assistant to CORE with this article.

Q With Mr. Skolnic?

A With Mr. Skolnic.

Q Now, with reference to the schools of the District of Columbia, can you indicate for the Court what interest you have taken in the school system since your arrival in Washington? Let me withdraw that for a moment. You arrived in Washington when?

A I arrived in Washington sometime in 1946.

Q You come from Birmingham, Alabama?

A I come from New York City. My home is in Birmingham, Alabama.

Q From 1946 to the present time, would you just detail in brief what interest you have expressed in the schools of the District of Columbia and how you translated that interest into a form of action?

A Yes. As far back as 1953-1954 --I forget which year-- I was president of Sloan Elementary PTA when we had a segregated school system in the District of Columbia. I left the PTA and became president of a local civic association and part of the committee on education. I served four years on the executive committee of the NAACP and we formed a committee there sometime around 1955 through 1958 to deal with the public schools and I was instrumental in working with Dr. Ellis O. Knox in the preparation of a book called "Desegregation of District of Columbia Public School System."

Q Mr. Hobson, I am going to show you Plaintiffs' K-2 for identification and ask you to identify this document and indicate to me what part you played in the preparation?

A This is "Democracy and District of Columbia Public Schools," written by Ellis O. Knox, Professor of Howard University, published in 1957 and there is a cover on it, it has "Steering Committee, Citizens' Committee Against Defamation," and this is the committee of people who prepared this particular book and my name is listed here as treasurer of that committee.

Q Now, did there come a time, Mr. Hobson, when you were involved in CORE?

A Yes, I was Chairman of the Conference of Racial Equality of the District of Columbia for four years from 1960, I believe, through midsummer 1964 and member of National Action Council of CORE.

Q While you were associated with CORE in the capacity you described, did you prepare any documents with relation to the D.C. public schools?

A I did. I prepared a report on the D.C. public schools called "Discrimination in D.C. Public School System, Based on Economic Level of Neighborhoods."

Q Is that what we refer to as the CORE ADA?

A That is what we refer to as CORE ADA paper.

Q I show you Plaintiffs' Exhibit D for identification and ask you whether that is the document to which you refer?

A It is and I would like to add that Mr. Remski Acheson, Vice Chairman of AACT, wrote the article dealing with police, and also Mr. John Sessions who is now a member of the Board of Education, wrote the section dealing with the budget. I wrote the section dealing with economics, pupil-teacher ratios, and temporary teacher assignments, etc.

Q Did there come a time, Mr. Hobson, when you became associated with what was referred to as Associated Community Team, or ACT?

A Yes, I am now Chairman of the organization called ACT.

Q And is this organization program at all related to any study or concern with D.C. public school system?

A Yes, we have a committee in that organization of about 8 or 9 people who are progressively working on doing collection and evaluation of data on D.C. public school system. We concern ourselves with this problem by our vice chairman and others testifying before the Board of Education on various problems in the school system.

Q Now, at my request prior to the beginning of the trial of this suit, did you prepare certain charts which had reference to the D.C. public school system or certain aspects thereof?

A Yes, I prepared, I think, 9 or 10 charts which have reference to the D.C. public school system.

Q Now, to talk in general about the preparation of these charts before getting into specifics, would you indicate for the record, how, in general, the charts were prepared, where the data came from, and how it was translated into a

chart, what the procedure was for the source of the information, and how it became a chart -- in brief?

A Well, with the exception of one chart out of 10, all of the data came from official publications of the D. C. school system, which we have in exhibits as Plaintiffs' exhibits.

The method of preparing these charts is to take the data, study them, array them, see if they lend themselves to charting, devise some scale and put in proportional measurements. You can prepare charts in pie fashion, bar chart, or curves. Usually the measurements here are in inches. You can do it in mills, you can do it in any other measure that you can use as scale if you so desire. But all of these charts here have been prepared using inches.

Q Would you say they are prepared according to any standard of common usage?

A I would say they are very common. This is the common method of graphic representation that you see on these charts here throughout most of them and all of the economic data. And I have seen even in a number of Board of Education publications charts of this nature prepared.

Q And is the type of chart you have prepared here related to the work which you do in the Social Security Administration?

A Well, indeed, all of the charts which appear in our articles in the Social Security Administration I designed, and they are finally drawn by graphic analysts. That is part of my job to take data and see if they will lend themselves to charting, and if they do, array them some way, and whichever chart presents a more graphic picture, I usually suggest it and it is usually done.

Q How long have you been doing this with the Social Security Administration?

A For about 6 years, but prior to that time I worked as an economist with the Legislative Reference Service, Library of Congress. I was called a labor economist and did the same thing -- graphic representation, gathering, analyzing and evaluating economic data.

Q On the charts which I am about to show you and ask you to explain, were they prepared in the same manner -- forgetting the subject matter which may be different -- in the same manner as you prepare your charts for the graphic draftsman in the Social Security Administration?



A Yes, they were.

Q Now, Mr. Hobson, I call your attention now to what we have listed as chart V-9 and ask you to exhibit it to the Court and indicate exactly what V-9 is?

A V-9 is a chart that I designed called D.C. Population and Income, and it is based on 1950 and 1960 census data, and it shows black populations and white populations of the District of Columbia in absolute numbers and it shows a black median family income and white median family income in percentages. This is designed to show how the predominantly poor class in the District of Columbia is the black class. Looking at the 1950 census data, we see that 64% --that the black median family income equaled to 64% as much as white family income; in 1960 black median family income equaled 62% as much as white family income. So the economic position of the black family in the District of Columbia declined over the decade of the '50s.

Q Now, Mr. Hansen -- I'm sorry, I mean Mr. Hobson--

THE COURT: You got used to it for three days.

Q Mr. Hobson, where did the information come from or the raw material which furnished the data from which you designed this particular chart?

A The raw material for this chart came from the U.S. Bureau of the Census.

MR. KUNSTLER: I would like to offer this chart into evidence, Your Honor, as Plaintiffs' V-9.

MR. REDMON: I would object to all these documents at this time subject to cross examination.

THE COURT: The Court will rule after counsel has had opportunity to examine them.

MR. KUNSTLER: Thank you, Your Honor.

Q Now, Mr. Hobson, I call your attention to what we have labeled as Plaintiffs' V-6. Can you see this?

A Yes.

Q And Your Honor can see it? And I ask what that purports to show?

THE COURT: Wait a minute. Would you move that whole thing down a little bit, please?

(The Marshal moves the board.)

BY MR. KUNSTLER:

Q Would you indicate for the record, Mr. Hobson, what the chart known as V-6 indicates?

A The chart known as V-6 is entitled, D.C. Public School, Members of the Board of Education, by Race, as of July 1 of each year from 1960 thru 1966.

Q What was the source of your information?

A The source of my information has been various copies of the minutes of the Board of Education and a copy of the Washington Post newspaper dated 5-1-1966.

MR. KUNSTLER: I would like at this time to offer this in as Plaintiffs' V-6.

MR. REDMON: The same objection, Your Honor.

DEPUTY CLERK: Plaintiffs' V-6 for identification.

(Plaintiffs' Exhibit V-6  
was marked for identification.)

BY MR. KUNSTLER:

Q Now, Mr. Hobson, we are placing on the rostrum what my notes indicate as our V-2 and ask you what that chart purports to show?

A This is a chart on median family income and pupil placement in D.C. senior high schools for the school year 1963-1964. This shows the area of junior high schools by percent of pupils in the basic and general tracks and honors and regular tracks. This shows that in the predominantly poor communities where the median family income is \$3,872 a year, for example, and that is Dunbar Junior High School, 82 to 85% of the children in that particular high school are in the basic and general tracks. And the little star up in the lefthand of this bar shows in the Dunbar Junior High School

there is no honor track. Going over to the extreme end of the high median family income where it is \$10,374, you see that is Deal Junior High School, that about 92% of the white students in that particular high school are in the honors and regular tracks, which I believe lead generally to college preparatory. The two basic tracks --basic and general-- generally do not lead to college education and if you notice the two stars at the far right they indicate that in Deal the predominantly white --

Q You mean Wilson or Deal?

A I mean Deal.

Q I thought Deal was a junior high school?

A I am sorry --senior high school. I mean Wilson.

Q Dunbar is a senior high school.

A You're right. This is Wilson. This shows that Wilson has no basic track and that Dunbar has no honors track.

Our exhibit V-2 is the source for this information on the tracks and the basic source for this chart is the House hearings on education and labor.

Q You say House hearings, you refer to what we refer to as the Pucinski Hearings?

A Right.

MR. KUNSTLER: Now I would then like to offer into evidence as Plaintiffs' V-2 --

MR. REDMON: Same objection, Your Honor.

THE COURT: The same ruling.

BY MR. KUNSTLER:

Q Now, Mr. Hobson, I have placed on the board there the chart which I have referred to in my notes as V-10. Would you indicate to the Court what that chart purports to show?

A The title of this Chart is, D.C. Public Schools, Percent of Temporary Teachers in the Elementary Schools by Neighborhood-Income Groups for 1965. The source of this chart is page 15 of the House Report and it is our Exhibit. This chart purports to show the distribution of temporary teachers based on median family income range. If you look at this chart you will see where the income range is \$3,999 and under there are 46% of the teachers in that school are temporary. That is the extreme poor end of the range. If you go to the extreme rich end of the range where the range is \$12,000 per year and up, you see 23% of the teachers in the schools over there are temporary, and if you look at the curve, the general trend of this chart, it shows that as the income range goes up the percent of temporary teachers in the schools in those areas go down.

Q Mr. Hobson, would you say that the rise at the far righthand corner as we face the chart, from 19% to 23.3% from the 10,000 to 11,999, up to the 12,000 and over is a significant rise from a statistical point of view?

A I don't think it is significant from a statistical point of view, it could be due to rounding and array of development of the data.

MR. KUSTLER: Your Honor, I made a mistake in my numbering. I think that is V-4, is that correct? Yes, V-4 instead of --I said, I think, V-10. I would like to offer this chart into evidence subject to the same objection of the Corporation Counsel.

MR. REDMON: At the same time, Your Honor, the objection goes to all.

THE COURT: Let the record show his objections to all documents and let the record show the ruling will be made on the objections after the witness has been cross examined.

BY MR. KUNSTLER: Now another chart has been put on the board which has to do with the average expenditure for the pupils in the elementary schools --our V-8, Mr. Hobson. Can you explain what that chart purports to show?

A This is D.C. public school average expenditure per pupil in the elementary schools by neighborhood income groups for the school year 1965. This came from page 15 of the House Report and our Plaintiffs' exhibit F-2. This chart purports to show that as the neighborhood becomes poorer, the average expenditure per pupil in the District public school system becomes less. At the extreme left end of the chart where the income range is \$3,999 and under the average expenditure per pupil is \$309. If we go to the extreme end of the chart where the income range is \$12,000 a year and up the average expenditure per pupil is \$400, and if you will notice the trend in this chart, the trend is always upwards as the income goes up, the average expenditure per pupil goes up; as the income goes down, the average expenditure per pupil goes down. If you take the chart we just talked about and put it beside this chart, you will have a U-shaped curve which will show as the neighborhood becomes poorer, more temporary teachers and less money.

Q This chart was prepared in the same fashion you described in your initial answer to my question as all were prepared?

A Correct.

Q Did you give the source of the data which went into this chart?

A House Committee on Education and Labor, House Report, page 15 and our Exhibit F-2.

Q Thank you. I would like to offer this one into evidence.

MR. REDMON: What is the number?

MR. KUNSTLER: V-8.

Now, I have placed on the board, Mr. Robson, what we have numbered as V-10 and ask you to indicate to the Court what that chart purports to show?

A V-10 is D.C. public school percent of elementary school children in schools with honor tracks by race, for 1965-66 school year. It shows total number of white children in schools with honor tracks equalling 100. It shows the total number of Negro children in schools with honor tracks equalling 100. The black part of the chart shows that 16% of the Negro children, black children in the D.C. public school system are in schools with honor tracks and that 84% of the black children in the D.C. public school system are in schools which do not allow them access to the honor track. Going up to the white chart, of the predominantly



white children it shows that 70% of the white children in the D.C. public school system are in schools that have honor tracks, which allow them to have access to honor tracks, and that 30% are not.

Q Thank you. And this chart was prepared from data accumulated from where?

A This chart was prepared from data accumulated from our Exhibit P-4 and also from the D.C. public school administration and other publications.

Q Thank you, Mr. Hobson. I would like to offer into evidence as Plaintiffs' V-10, that chart.

Now before we get to the chart that has been placed on the board, Mr. Hobson, have you done any analysis without producing a chart of the track flexibility, the flexibility of the track system in Washington, the ability of children to go from one track to another up or down?

A Yes, I have done an analysis of track flexibility.

Q Have you brought that analysis into court with you?

A Yes, I have brought my notes on that analysis, if you give me one second to find it here. I have it here.

Q Before you go into them, you are looking at a paper you are holding in your hand, correct?

A That is correct.

Q And without referring to that paper are you able to give the analysis?

A No, there are some figures involved here and I don't remember the figures. I have to read a paper.

Q Would the paper help you refresh your recollection what those figures are?

A Yes, it would.

Q Would you indicate to the Court, based on the figures you have, indicating where they came from and what analysis you made of them?

A These figures which I am holding in my hands came from our Exhibit B-1, Plaintiffs' exhibit, and they purport to show track flexibility, that is, number of pupils that changed tracks in the course of the school year. Our exhibit is dated and is movement between tracks, June 1963 to June 30, 1964. And for example, I found by analyzing these data in this exhibit that in that school year 591 students in all of the tracks in the D.C. public school system went down, and 761 students in all of the tracks in the D.C. public school system in that year went up.

If you do this on a percentage basis, if you take the number of students who went down as a percent of the school population in that year, you will find that in the school year 1963-64, about 8.3% of all senior high school students,

A I am referring to exactly what the Board of Education refers to in documents -- sometime expenditure per pupil, sometime per capita cost, that means the amount of money spent per pupil in a given school year.

Q It is synonymous with per pupil expenditure?

A That is right.

Q This chart prepared in the same fashion as the other charts, is that correct?

A Yes.

MR. KUNSTLER: I am offering this chart into evidence --V-7.

I have put on the board, Mr. Hobson, what we have designated as Plaintiffs' Exhibit V-3, entitled Degree of Teacher Segregation in All-White and Predominant White Schools, and ask you to indicate to the Court exactly as you have for the previous charts the source of the information, how it was formulated, and what the chart means?

A This chart is entitled D.C. Public Schools (Elementary) Degree of Teacher Segregation in All-White and Predominant White Schools for School Years 1961-1962 to 1965-1966. The sources of this chart were Plaintiffs' Exhibits M-5, M-4, M-3, M-2, and M-1, P-8, P-7, P-6, P-5, and P-4. This chart purports

to show teacher segregation for the school year 1961-62. There were 23 predominant White schools in the District of Columbia with 310 White teachers and 31 Black teachers. Black teachers equalled to 9% of the total number of teachers in the predominant White schools in that year. In the school year 1962-1963, there was still 23 predominant White schools with 298 White teachers, and 49 Black teachers. Black teachers had gone up to 14% of the total number of teachers in that school year. 1963-64, there were 19 predominant White schools, 249 White teachers and 25 Black teachers, and Black teachers had gone down to 9% of the total number of teachers in predominant White schools that year.

1964-65, there were 18 schools, 240 White teachers, 17 Black teachers. Black teachers equalled to 7% of the total number of teachers in predominant White schools that year.

1965-66, there were 14 schools predominantly White, with 184 White teachers and 5 Black teachers. The Black teachers had gone down 3% of the total number of teachers in the predominant White schools that year.

This chart, the bars on the right show an increase in teacher segregation for the school year 1961-62 to 1965-66. down at the bottom is some writing, says school year 1961-62,

74% of the above 23 schools have all White faculties. In 1962-63, again, 74% of these predominantly White schools had all-white faculties.

In the school year 1964-65, 72% of the above 18 schools had all - White faculties.

And in 1965-66, 71% of the above, 14 schools had all-White faculties.

Q Did you indicate, Mr. Hobson, the sources of this information? I believe you did.

A This came from our Exhibits M-5, M-4, M-3, M-2, M-1, and P-8, P-7, P-6, P-5 and P-4.

MR. REDMON: Excuse me. Would he go a little slower?

MR. KUNSTLER: Yes, would you repeat that slower, please?

A These charts came from our Exhibits M-5, M-4, M-3, M-2, M-1, and our Exhibits P-8, P-7, P-6, P-5, and P-4.

Q Mr. Hobson, in connection with chart, do you have any statistical data as to how many of the teachers of the Washington, D. C. public school system as of say 1965-66 are Negro?

A No, I don't have any information to that at the present time.

MR. KUNSTLER: I would like to offer into evidence V-3 and replace it with V-5.

Q Mr. Hobson, before leaving V-3, you say you have no statistical data as to percentage of Negro teachers. Do you have any general percentage of Negro teachers in the Washington, D.C. school system?

A I don't. I think it is in our Exhibits. I don't recall, but I think it is something like 70% or more. I am not sure of those figures, but they are in the Exhibits.

Q I wanted to know if you knew. Mr. Hobson, we have placed on the board what we designate Plaintiffs' Exhibit V-5, labeled Total Number of Drop-Outs by Cause, 1960-1961 and 1964-1965, and ask you to make the same exposition as you have about the other charts with reference to V-5?

A This is a chart, D.C. Public Schools, Total Number of Drop-Outs by Cause for two school years --1960-61 and 1964-65, and has the causes listed in the left margin of the chart and the actual number of drop-outs in the right margin of the chart, represented by the bars.

The source of this chart is our Exhibit C-2 and a C-1 document which we have which is from the House Committee on Education and Labor which we acquired from them.

This chart shows a startling increase in the numbers of students who dropped out of the D.C. public school system for the reason called lack of interest. ✓

If the total school population, for example in the school year 1964-65 was --and this includes children in the elementary schools, junior high schools and vocational high schools-- 120,166. There were 1,965 drop-outs in that year, or about 1.4% of the total. In the school year 1960-61, there were 1069 drop-outs, and as a percent of the total school population they were 0.9. So the drop-out if done on a calculator might have increased somewhere around 50% --I haven't done that but this lack of interest bar indicates that increasing number of children are losing interest in the public school system, a disproportionate number in terms of school population. ✓

If we go to another category, but take the category "institutionalized," now I understand that category means <sup>been</sup> children that have/put in jail. In 1960-61, 188 children went to institutions. In the school year 1964-65, 522 children were put in jail, or went to institutions. This is an increase in other words, 522 children went to jail in 1964-65, would be something like 230% went to jail in 60-61. ✓

Strangely enough, we have a category on here called "mental incapacity" and we had no children in the school system with mental incapacity in the school year 1964-65, where we have 13 in 1960-61.

Looking at economic reasons other than employment, we find that there has been a slight increase which I do not think is disproportionate to the increase in the school population in the number of children who have dropped out for economic reasons other than employment. In the school year 1960-61 there were 245 of these. 1964-65, 327.

Q This chart was prepared, was it not, Mr. Hobson, exactly the same manner as you indicated in your prior testimony?

A Yes, and I'd like to point out in the margin of this chart --and this statement is from the House hearings-- that we have a statement that says that during the past five years there were 18,099 drop outs and 15,970 high school graduates -- a drop-out rate of 53% over last five years.

Q Now, Mr. Hobson, since this is, I believe, our last chart I would just like to ask you several general questions about the charts. When you prepared the statistical material -- and assembled and prepared the statistical material and designed the chart, the chart was then as I understand you to say, prepared by a draftsman?



A That is correct.

Q Was that done under your supervision?

A Indeed.

Q Then, when the charts came back to you, did you then check the data again for accuracy?

A I checked the data for accuracy.

Q With reference to all of the chart Exhibits, is it your testimony they are all accurate and reflect the data which you have obtained in the manner you indicated and from which you designed the chart and gave the material to the draftsman?

A It is my testimony to the best of my ability they are accurate.

Q Now, Mr. Hobson, at my request, did you make any analysis as you did of track flexibility, of the library situation?

A Yes. I took a look at our Exhibit H-1.

Q If I may interrupt you, I would like to offer in evidence V-5. Go ahead, I am sorry.

A Yes, I would hardly call it an analysis, it is something that jumps out at you by observation. I looked

at our Exhibit H-1 and I found on page 5 of our exhibit H-1, and I used another of our exhibits which has to do with pupil membership --I have forgotten the number-- to classify these schools Black-Segregated, and I found on page 5 of our exhibit H-1 there are a list of 18 schools without space for libraries and that all of these schools but two are Black-segregated, and that these other two are predominantly Black and that all of the White children in these schools are in the basic track. One school, Blow, has one White child in basic track. Another Sam Lovejoy, has seven White children in basic track, and Orr and Sloan, it seems that these White children are confined to these schools, only the White children are in basic tracks.

Now I have to say the date of this is May 16, 1966, so I don't know if there has been some change.

Q That is an official document of the Board of Education?

A Right. This is our Exhibit H-1.

MR. KUNSTLER: No further questions, Your Honor.

MR. REDMON: Your Honor, may we recess at this time, or move on?

THE COURT: We'll take a five-minute recess.

(Whereupon a brief recess was had and change of reporters.)

Dr. Gertrude Justison to the stand.

Whereupon

DR. GERTRUDE G. JUSTISON

was called as a witness for and on behalf of the Plaintiff and, having been first duly sworn, was examined by counsel and testified as follows:

DIRECT EXAMINATION

BY MR. KUNSTLER:

Q Dr. Justison, would you state your full name for the record?

A Dr. Gertrude Justison.

Q And Dr. Justison, what is your present occupation?

A I am Associate Professor of Howard University Graduate School and Undergraduate School and part-time member of the staff of the Center for Youth and Community Studies.

Q Now, I know it is going to be difficult, but would you keep your voice up as much as possible, because the reporter has to get it down.

A All right.

Q Are you here pursuant to a subpoena served upon you by the plaintiffs in this action?

main field of work for more than a decade has been in the subjects I have just indicated, going over them briefly with you?

A Yes, sir, and not just as an ivory tower person. I have been a practitioner and I think this helps.

MR. KUNSTLER: Your Honor, at this time I would like to offer Dr. Justison as an expert in the fields I have just discussed with her, special education with reference to children and teacher preparation, education of the mentally retarded and the like.

MR. CASHMAN: Your Honor, may we examine the doctor briefly on the qualifications?

THE COURT: Very well.

CROSS-EXAMINATION (Voir Dire)

BY MR. CASHMAN:

Q I think I heard you say, Doctor, when you were testifying in response to the subpoena you were appearing here as a lay witness?

A Yes, sir.

Q May I ask you --

A A citizen witness.

because he had to prepare all of his material and he didn't have time to do it last night because it was a long deposition and he was counting on tonight to do that.

MR. MULLANEY: Your Honor, the real thing that bothers us about this whole law suit is the fact that this is a very important case and there has been a totally unorthodox approach in the way it has been presented. It is unfair to the plaintiffs and it is unfair to the defendants.

It is unfair in every sense of the word and we have tried at every turn of the page to do what we could, with all due respects to the Court's desire to bring this matter to a termination, as quickly as possible and as properly as possible, to move with dispatch, but I say that this cannot be done by working all day and fighting all night to try and find out through discovery what you are going to have to face in order to learn a little<sup>bit</sup>/about the next day's events.

I have been a member of this bar for 16 years and I have never seen a case either prepared or presented in the fashion that this one is being presented. I think it is grossly unfair to the defendants in this case and I think when you go back and remember what was said to this Court as far back as

May, that we are ready to go forward, I think it is patently a misrepresentation because it subsequently developed that they didn't know what Dr. Coleman will say, for example, and it is not only as I say grossly unfair, but it is a burden, an impossible burden that this Court is imposing upon the defendants.

THE COURT: Well, as I explained to you on a prior occasion, under the rules you can set discovery on the day you file your answer. You can set discovery by applying to the Court on the day of service. In this case it has now been over six months since it was filed and there has been no application for discovery of any kind to the Court so your reference to making these efforts to get your case ready is, I think, an overstatement. You could have come in a long time ago and asked for the witnesses to be deposed, but you never asked for the witnesses and the Court would have required them to give you the witnesses, but you never asked for them so there is no way the Court could order them to give you the witnesses.

So I think your statement is a gross exaggeration of the conditions.

having been first duly sworn, was examined by counsel and testified as follows:

DIRECT EXAMINATION

BY MR. KUNSTLER:

Q Now, Dr. Davidson, will you state your full name for the record?

A Edmonia White Davidson.

Q And what is your present occupation, for the record?

A Associate Professor of Education at Howard University.

Q How long have you been Associate Professor at Howard?

A Since September 1965.

Q And in what field are you specializing at Howard?

A In the field of educational sociology and adult education.

Q Dr. Davidson, I would like to take you through your secondary education after high school. Where did you receive your first degree, what was the institution of higher learning?

A I received my first degree from Howard University.

Q And in what year?

study. I have, since WPA days, worked with various groups in regard to this, the American Association of Adult Education, their Commission on Literacy. I worked with Dr. Ambrose Calhoun in the Office of Education in the preparation of adult literacy materials recorded in the Brown family, materials which have been used. I worked with a committee with Dr. Paul Witty of Northwestern on "Meet Private Pete," which is part of the Army materials. I worked as a volunteer for the Adult Education Association to examine the materials of all of the branches of the Armed Forces in adult literacy, literacy programs of the Army, the Navy, the Marines and the Air Force.

Q Dr. Davidson, would adult education include both in-service and out-service training of teachers?

A It does.

MR. KUNSTLER: Your Honor, at this time I would like to offer Dr. Davidson as an expert in the field of educational sociology with an emphasis on disadvantaged people and adult education, and in the field of adult education in special reference to in-service and out-service teacher training.

THE COURT: Your witness, Mr. Cashman.

MR. CASHMAN: Thank you, Your Honor.

BY MR. CASHMAN:

Q Dr. Davidson, you indicated that you acquired a



of this Education Working Party. The other names on the pink sheet -- but these people are not members. You will find on the first white sheet there, I think, the list of the names of the people who are members of the committee.

Q I see. May I ask you, Dr. Davidson, will you receive for your testimony in this lawsuit on behalf of plaintiffs an expert's witness fee?

A I have not been offered such a fee and since I was subpoenaed as co-chairman of this committee, on which I serve free, I had assumed that this is again a part of my public service, and I had not considered a fee to be involved.

Q I see. Then you didn't request a fee?

A No, I did not, and this is the first time I ever testified so I didn't know that a fee was possible.

Q I see. Well since you just indicated in your last answer that this is the first time that you testified, I take it that you have never then testified as an expert witness before?

A No, I have not, not in a court.

MR. CASHMAN: Thank you. That concludes my examination.

THE COURT: Unless there is an objection, the Court will admit the testimony of Dr. Davidson as an expert in the field -- what are you qualifying her for, adult education and what else?

MR. KUNSTLER: Just as I indicated, Your Honor, in the field of educational sociology, but confined to the education of disadvantaged people and to adult education.

MR. CASHMAN: Your Honor, the defendants do have an objection with respect to this witness being proffered as an expert in any field other than adult education. It seems to the defendants that educational sociology itself encompasses so many broad areas that there has been no showing that this witness is an expert in that area, although we will concede her expertese in the area of adult education.

THE COURT: Is this testimony going to relate to --

MR. KUNSTLER: It is going to relate to adult education, Your Honor, and it is going to be extremely brief on that. I had added the education of the disadvantaged to adult education, but I will abide by Your Honor's ruling on it.

THE COURT: Well, the Court will accept the witness as an expert in the field of adult education and education in the field of the disadvantaged.

Now by this do you mean you want to go into the track system?

MR. KUNSTLER: No, Your Honor, this witness is not going to testify as to any phase of the track system except --

THE COURT: I was just reading your paper here.

MR. KUNSTLER: That's right. This is going to be

severely limited, Your Honor.

THE COURT: Let's proceed. He says he is not going into the track system. It is on his list. That is why I asked.

MR. CASHMAN: Very well, Your Honor. I just wanted to make it clear that we do concede she is an expert in adult education but nothing else.

MR. KUNSTLER: Now, Your Honor, per our agreement we will suspend with Dr. Davidson so that we can get Dr. Coleman through.

THE COURT: All right, will you step down. Thank you very much, Dr. Davidson.

(The witness left the stand.)

Whereupon,

JAMES SAMUEL COLEMAN

called as a witness by the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KUNSTLER:

Q Dr. Coleman, will you state your full name for the record?

A James Samuel Coleman.

Q And where are you presently employed?

A I'm presently employed at Johns Hopkins University in Baltimore.

Q And in what capacity are you employed?

A I am a Professor in Social Relations Department.

Q And how long have you been so employed by the Johns Hopkins University?

A Since the fall of 1959.

Q And can you inform the Court where you took your college degree?

A I was an undergraduate at Purdue University and took a Ph.D. at Columbia University in 1955.

Q What was your degree at Purdue?

A Chemical Engineering.

Q And your degree at Columbia University?

A In Sociology.

Q And when you left Purdue University in 1949 what did you do?

A I worked for a year and a half for Eastman Kodak Company as a chemist.

Q And then after that?

A After that I went to Columbia University as a graduate student from 1951 to 1955.

Q In what bureau of Columbia University?

A I worked as a Research Associate in the Bureau of Applied Social Research at Columbia.

Q And during that time you completed your requirements

Q Doctor, assuming that a school district in which there are a great many elementary and junior high school and high schools in which the majority and in instances the overwhelming majority of all the students are negro, or the school is predominantly negro, and assuming also that the same preponderance of students are in what we call the lowest median family income group, let us assume \$3,000 to \$3,999, and that the students are altogether in one school, from your own experience and research in the field of educational sociology, what conclusions have you drawn as to the ability of these students to achieve below or above their potential under those circumstances?

MR. CASHMAN: Your Honor, before the witness is permitted to answer the question, I think it ought to be clear on the record as to whether or not this hypothetical question falls into his area of expertise and this has not been so established.

THE COURT: Doctor, in your judgment, does this question fall within your area of expertise?

THE WITNESS: In my judgment, it does.

THE COURT: It does?

THE WITNESS: Yes.

THE COURT: I will overrule the objection and you may answer it.

BY MR. KUNSTLER:

Q Could you answer that question, Doctor?

A In the past, in my research, on the basis of my research in the past year and a half I would have to clearly say that a child in such circumstances would not have the opportunity of achieving or the likelihood of achieving as high in the kinds of tests which I am familiar with, and which are exemplified here, as he would if he were in a different social environment. A

Q And would you define, Doctor, what you mean by a different social environment?

A A different social environment would be one in which the educational and economic backgrounds of the other children in the school were considerably different from those that you have described. NK

Q Could you give the Court an example of what you mean by considerably different than the one I have described?

A Well, in the research that I have carried out, there

are two major aspects of this difference -- one is racial and the other is economic -- and in both of these respects the child who is exposed to the higher or higher social or economic characteristics of the school will, as I say, achieve more highly than a child of similar background who is in a school in which the other students are all of a lower socio-economic background. A

Similarly, a negro child in a school which is predominantly negro does not achieve as highly as a negro child with a similar socio-economic background in a school which is predominantly white or has a higher proportion of white students in that school. A

Q Now, Doctor, in your research and experience, have you found that the child that we meet in the first type of school, a school where he is in a homogenous group of all very much like himself, from the lower median income families, and from the same racial background, have you found that that child does better or worse in a school which is a poor school from the point of view per capita expenditure, age of school, facilities, and libraries and the like?

MR. CASHMAN: Your Honor, I don't mean to be an

you will have to relate your questions to the facts in evidence in this case.

MR. KUNSTLER: Very well, Your Honor.

THE COURT: You should then confine yourself to that aspect.

MR. KUNSTLER: Very well.

BY MR. KUNSTLER:

Q Dr. Coleman, assuming a school system, and assuming a particular school, elementary or high school in that system, in which all, or predominantly all of the students are within the lowest median income ranges as we have described, and also within the same racial background, and assuming that the school in which they find themselves lacks, for instance, a library, lacks a cafeteria, is a very old school in point of time, has a great many temporary teachers associated with it, and is in a neighborhood which is the same neighborhood as all the children come from and which is staffed predominantly by teachers of the same racial background as the students themselves, would you say that the physical factors which I have described to you would have more or less of an effect on the students in this school as far as their



aptitude and achievement are concerned?

MR. CASHMAN: Now, Your Honor, I would object to that question on the grounds that the hypothetical question posed by counsel is not related to the facts in this law suit, it is not related to any evidence that has been introduced into this law suit. This is a general hypothetical question that is assuming some factors that have not even been defined. For example, temporary teacher -- what is a temporary teacher. I am not an expert witness. What is a temporary teacher as we know a temporary teacher to be in the District of Columbia? I don't know.

MR. KUNSTLER: I will eliminate the temporary teacher.

MR. CASHMAN: There are salient factors and there are undefined considerations that are being proposed to this witness and he is expected to give an answer and I think, Your Honor, the question is improper.

MR. KUNSTLER: I will withdraw "temporary teacher."

THE COURT: I will overrule the objection.

Now, if you amend your question to define what temporary teacher means by reason of the facts in this case

you can leave the temporary teacher in. Otherwise, take it out.

MR. KUNSTLER: I will withdraw temporary teacher, Your Honor, for the moment, and leave all the other factors that I have, the physical factors, that I have in the question.

MR. CASHMAN: Your Honor, may I ask further whether or not this question is related on the basis of this witness's answering it as to his year and a half association with the Equal Opportunity Project. May that be understood that he is not answering it in that context?

THE COURT: Mr. Witness, you are being asked as an expert to call upon your entire background of study and experience in whatever and at whatever time. We don't wish you to specifically relate your answer to any particular place where you may have studied, or to any particular document that you may have read. We want to have you relate your answer to the facts outlined in the question. Do you understand that, Doctor?

THE WITNESS: Well, I need a little clarification, and the clarification is this: Does this mean that I am

forbidden to use any knowledge that has been gained in this research in the past year and a half?

THE COURT: No, it doesn't mean that. It means that you cannot use any of the facts which you studied in connection with that research to which you have just referred -- you must use the facts as outlined in the question which has been put to you by counsel. You must use those facts and apply your judgment as an expert to those facts.

Do you understand me, now, Doctor?

THE WITNESS: Well, it is a fairly thin line, but I think I do.

In response to this question, the evidence before us would indicate that children from lower socio-economic backgrounds are more affected by the characteristics of the school that they are in, whether this be physical characteristics, or social characteristics, than are the children from higher socio-economic backgrounds. A

The phenomenon appears to be this: It appears to be the case that children from families with a strong educational background are less sensitive to variations in school characteristics, both physical characteristics and

social environment of the school than are children from families with less strong educational backgrounds and therefore, in the hypothetical case that you specify, I would certainly say that on the basis of my experience, I would certainly say that such a child would not have an opportunity to achieve a great deal of his potential. *NF*

Q Now, assuming, Doctor, that the child from the type of school in my hypothetical question was removed from that particular school and placed in a school which allowed for more variegation in regard to the students with whom he could come in contact as well as the teachers he would come in contact. For example, there would be a much greater percentage of white teachers or much greater percentage of white fellow students there, different, from different cultural backgrounds, different economic backgrounds than his own such as in a school in the suburbs, for instance, as compared with a metropolitan school -- although I will withdraw that portion for the moment -- assuming that he was just put into another school of the same type that I have mentioned in my first example, with the same defects such as lack of adequate library and an old school, the

only variation being in the two examples the fact that the second school has this heterogeneous composition that I have described -- would that child be inclined to do better or worse in such a school?

MR. CASHMAN: Your Honor, may I have the advantage of a rereading of that question so that I may attempt to understand it and a pregnant pause so that I could object to it if I think it is valid to do so?

THE COURT: Well, I think that the question ought to be rephrased and if the Court understands the question, the question is this: If a child from a disadvantaged social and economic background and of the negro race is taken out of the neighborhood area and put into a school where he is mixing with predominantly white children and is being taught by predominantly white teachers, does he then have a better opportunity to learn than he would in a school in his own area populated by children of his own race and of his own economic and social background and taught by negro teachers?

Q

A.B.

THE WITNESS: The evidence is, my experience is that he would achieve more highly in the aptitude and achievement

tests in the second situation. A

THE COURT: And by the second situation you mean what?

THE WITNESS: In the situation in which he was in the school which was heterogeneous including students of a higher socio-economic background including white students and including white teachers in the environment that you have described. A N.B.

THE COURT: You may proceed.

BY MR. KUNSTLER:

Q Now, assuming, Dr. Coleman, that there is no movement of the student from the first school I have described in my first hypothetical, would you say an infusion into that school of many more services and facilities such as a library, if none were there, such as a new school if it were a very old school, such as a cafeteria, if no cafeteria was in existence, such as a better pupil-teacher ratio -- assuming the pupil-teacher ratio was a high one, to make it a low one -- would you say that those factors would have any effect on the child of the type we have discussed earlier, the negro child of the lower economic social group O

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remaining in the neighborhood school within his own area -- would that have an appreciable effect on his aptitude and achievement test scores?

MR. CASHMAN: Your Honor, I am compelled to object to that question on the grounds that it does not relate as per Your Honor's instructions to the facts in this case. There is no relationship at all to the facts in this case in the assumption in this new hypothetical question and the facts that have been presented by way of evidence to this court.

For that reason, Your Honor, I object to the question.

MR. KUNSTLER: I think it is exactly related.

THE COURT: Well, is there any particular part to which you have reference, Mr. Cashman, because I must frankly say that it does seem to me to relate to the facts. If there is a particular part that you have reference to, I think we ought to know it.

MR. CASHMAN: Well, the first one here that occurs to me, Your Honor, is the pupil-teacher ratio. Where has it been put into evidence in this law suit that we have a high

pupil-teacher ratio with respect to the District School System?

What is a high pupil-teacher ratio. Is it 25 to one, is it 18 to one, is it 30 to one, or 200 to one? I don't know, Your Honor.

THE COURT: All right. I will overrule the objection.

Dr. Hansen testified that 30 to one was the norm they tried to achieve in the elementary school and 25 to one in the secondary school, so I will take his word for it. He is an expert, too.

MR. CASHMAN: That is true, but as I say, I don't remember, or I don't see any relationship between any school in the District and there is no evidence that any such school is starkly different from that norm in evidence.

THE COURT: I will overrule the objection.

THE WITNESS: In my experience, this would not have an extremely substantial effect -- that is on the basis of my experience. The physical environment in the school is not as important as the social environment of the school and the social environment of the school is considered over the

A

pupil-teacher situation in the school. The social resources at a school have a greater effect on the achievement of the student of that school, more than do the physical resources of the school.

At the same time it is the case that the physical resources of the school have a more noticeable impact upon the achievement of children from disadvantaged backgrounds than they do on the achievement of children from advantaged backgrounds so that there are really two comparisons that are necessary to make with respect to this question and that is the comparison of the physical resources of the school related to the social resources of the school and the physical resources of the school are not as strong.

With respect to the other comparison, the effect of the physical resources of the school on the child from the disadvantaged background relative to its effect on the child from the advantaged background, its effect is greater for the child from the disadvantaged background.

BY MR. KUNSTLER:

Q Dr. Coleman, just a few more questions: In your experience in the field of education and sociology, have

## DIRECT EXAMINATION (Continued)

BY MR. KUNSTLER:

Q Now, Dr. Davidson, with reference to the report which I believe you call Plaintiff's Exhibit A-10 for identification, which was produced under your supervision as co-chairman with Mrs. Ruth Strauss of the Education Working Party, I would like to ask you, with particular reference to pages 68 and 69 thereof --

A May I ask corporation counsel to let me have the copy which I gave to them? Thank you.

Q You can take this one, A-10. Did you or your committee attempt to obtain the information from the teachers of the District of Columbia School System in order to compile a report on pages 68 through 69?

A Yes, I did.

The report begins on page 64, I believe.

Q Pardon me, and did you do this with the approval of any official of the District of Columbia School System?

A This was done by our sub-committee of the Education Working Party and it was approved by Dr. Dorothy Johnson, Mr. John Koontz and Dr. Norman Nickens.

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Q Pardon me, and did you do this with the approval of any official of the District of Columbia School System?

A This was done by our sub-committee of the Education Working Party and it was approved by Dr. Dorothy Johnson, Mr. John Keontz and Dr. Norman Nickens.

Q And who is Mrs. Dorothy Johnson?

A She is Assistant Superintendent of Schools for elementary education in the District of Columbia.

Q And who is Mr. John Koontz?

A He is Assistant Superintendent of Schools for the secondary education in the District.

Q And who is Mr. Norman Nickens?

A He is -- I don't remember his exact title, but he is responsible for the Model School Program.

(Whereupon, Plaintiff's A-11 was marked for identification.)

BY MR. KUNSTLER:

Q Doctor, I show you Plaintiff's Exhibit A-11 for identification, and forgetting the written material at the top of the page, in pen, of that particular document, what is this?

A This is a document which was sent to the teachers in the basic track asking them five questions, showing the approval of the three people who were named as approving it, and it was later sent by Mrs. Rose Paper, President of the Council on Exceptional Children, Chapter 49, who is a member

of my committee, our committee, and the questions were as follows: "One, how long have you been teaching in the field of special education in the District of Columbia? Two, is your present job status temporary, probationary, or permanent? Three, do you have a BA degree, an MA degree, or neither? Four, what courses have you had in special education. Of these, which have you taken in the last five years? Five, would you be willing to continue your education if in-service tuition free courses were provided for you?" And then it has the teacher's signature and the school.

Q As I understand it, this was sent out to only those teachers who were in the special education field in the District of Columbia School System?

A That's right. And it was sent out on March 1, 1966.

Q Was it sent out to each teacher?

A Each teacher.

Q And then you received some responses from those teachers, is that correct?

A ~~That's~~ correct.

MR. KUNSTLER: I would like to offer this into evidence, Your Honor, without the material on the top.



MR. CASHMAN: Your Honor, with respect to A-11, I have no objection except to that portion that is in handwriting on the top. If counsel would provide a clean copy of this as we are trying to do with respect to the others.

MR. KUNSTLER: Yes, we have an understanding and it is going to be a trial for all of us to make clean copies of every document where there is written material, but we will try to do so after the close of the plaintiff's case.

THE COURT: The document is admitted without the handwriting legend at the top and it is understood that the legend will be removed.

(Whereupon, subject to the reservations stated by the Court, Plaintiff's Exhibit A-11 was received into evidence.)

BY MR. KUNSTLER:

Q Now, when the responses were received from some or all of the teachers as the case may be, was a report ultimately issued in relation to these five questions?

A Yes, there were two reports issued. One which is reported in this document, was a preliminary report and the

second report, which is the final report, which is not in this document.

*where is it*

(Whereupon, Plaintiff's Exhibit A-12 was marked for identification.)

BY MR. KUNSTLER:

Q Dr. Davidson, I show you Plaintiff's Exhibit A-12 for identification and I ask you whether this is the preliminary or the final report?

A This is the final report.

Q By whom was that prepared?

A It was prepared by the committee and assigned to do the job were Mrs. Rose L. Paper, Miss Rosetta Mitchell from Sharpe School and Dr. Gertrude Justison from Howard University, the three members of the Education Working Committee.

Q And the first two were teachers in the District of Columbia School System?

A Right, and Mrs. Paper is Chairman of the Council for Exceptional Children.

Q Now, that completes your answer?

A Yes.

MR. KUNSTLER: I would like to offer into evidence Plaintiff's Exhibit A-12, Your Honor.

MR. CASHMAN: With reference to A-12, Your Honor, I would ask the Court and I would prefer that it be placed in the same category as the document of the educational working party progress report about which Your Honor said you would reserve your ruling until we might examine this witness with respect to it.

THE COURT: That is understood.

MR. KUNSTLER: I didn't think we had offered the Working Party document into evidence, Your Honor.

MR. CASHMAN: I see.

MR. KUNSTLER: I don't think we did, but if counsel has no objection I will offer into evidence pages 64 through 69.

MR. CASHMAN: All right, Your Honor, with the same proviso.

BY MR. KUNSTLER:

Q Now, Doctor, I would like to call your attention to a visit you made to Randall School, as I understand it, with Mrs. Ruth Strauss. Do you recall that?

A Yes, I do.

Q Do you recall in what connection you and Mrs. Strauss visited the Randall School and would you identify, again, for the record, Mrs. Strauss?

A Mrs. Strauss is co-chairman of the Education Working Party and Mrs. Strauss is supervisor of the Special Education on the junior high school level in the District of Columbia.

I have worked with Mrs. Strauss and Mrs. Strauss had on several occasions, by working in the committee, invited me to visit a school with a good program for these basic children. We had discussed this many times and I had said to her in the fall of 1965 that I would visit such a school if she would provide me with a profile of each of the students who were assigned to these classes so that I could see who these children were and looking at the kind of educational program that was developed, that the teacher was developing with them, could assess the situation.

Q You were interested in the teacher aspect, is that correct?

A Yes, I was interested in the teacher aspect and what she was doing with these children and how these children.

were learning.

Q Now, Doctor, would you define for the record exactly what a profile is?

A A profile consists of the tests that have been given to children, students, for placement in a particular class. In this instance in the basic track and this consisted of several tests.

Q Did Mrs. Strauss provide any profiles to you?

A Yes. Mrs. Strauss told me that she had --

MR. CASHMAN: Your Honor, may we refrain from hearsay.

MR. KUNSTLER: Well, providing is not hearsay.

MR. CASHMAN: "Mrs. Strauss told me that --

THE COURT: Don't say what she told you. Just answer the question. Did she provide it?

THE WITNESS: Oh, yes. In visiting the Randall School, Mrs. Strauss provided me with a profile of the students in those cases at the Randall School, a profile of each class.

(Whereupon, Plaintiff's Exhibit  
A-13 was marked for identification.)

BY MR. KUNSTLER:

Q Now, Dr. Davidson, I show you Plaintiff's Exhibit A-13

for identification and I ask you to identify that document for the record.

A This is a document that served, that sort of offset the students, or had their names removed so that they could not be identified and the members of the committee received copies of the profiles in order that we should be able to discuss the system and what was going on and we discussed what we saw.

Q That is what you defined previously as a profile, is that correct?

A That is correct.

Q And that profile, for example, lists the date of last testing?

A Yes, the profile shows the date of birth, the child's age, the school from which he came, the child's reading age, reading achievement grade level, mathematic achievement level, the name of the intelligence test that we used, the date of the tests, the IQ of each child who had been tested, the interested agencies -- the agencies which were interested in the child and his academic progress.

Q Dr. Davidson, what particular class was this at Randall?

A These were the classes of seventh, eighth and ninth grades.

Q And what day was the visit made?

A I'd have to look into my records to get the specific date --

Q Do you remember the month?

A It was the month of December 1965. It was before the Christmas holidays.

Q And this is the profile that you received from the school?

A That is correct.

Q On that particular day.

MR. KUNSTLER: Your Honor, I would like to offer the profile into evidence as A-13.

BY MR. KUNSTLER:

Q While counsel is looking at the exhibit, Dr. Davidson, my last question to you is: Was that the only profile or -- let me rephrase that -- was Randall School the only school for which profiles were available or made available to you and your committee?

A Mrs. Strauss said to me --

THE COURT: No, not what she said.

THE WITNESS:

/ All right. Would you ask the question again?

MR. KUNSTLER: Would the reporter read back the last question?

(Whereupon, the last question was reread by the reporter.)

THE WITNESS: Randall was the only school for which profile was made available to my committee.

MR. CASHMAN: So far as A-13 is concerned, I would ask that the Court make the same reservation until we have had an opportunity to cross-examine the witness with respect to it.

THE COURT: All right.

BY MR. KUNSTLER:

Q Just one more question, Dr. Davidson: Do you know whether profiles were available or kept by other schools at all -- do you have knowledge of that?

A Well, am I --

Q Not what you were told, do you know?

A I do not know, no.

MR. KUNSTLER: I have no further questions.

THE COURT: You are excused, Doctor, and thank you



very much.

(Whereupon, the witness was temporarily excused.)

MR. KUNSTLER: Now, if Your Honor please, we would like to complete with Dr. Justison.

THE COURT: Very well.

Whereupon

DR. GERTRUDE JUSTISON

resumed the stand and having been previously duly sworn, was examined further by counsel and testified as follows:

DIRECT EXAMINATION (Continued)

BY MR. KUNSTLER:

Q Now, Dr. Justison, for the benefit of the Court, would you give us your definition of mental retardation.

You have already defined special education.

A Again, am I permitted to read the definition?

Q If you give the source.

A This seems rather important, because there is a great deal of confusion about what is retardation.

The source of my definition would be in the report of the President's Task Force on Retardation and I think the date of the publication is 1963, but I could give you a more definitive bibliography reference if it is necessary. I should

warn you that this is a long definition.

Q Is it something that could be put into the record if you could identify it?

A Yes, it is.

THE COURT: Well, how long is it -- a whole page?

THE WITNESS: It is several pages. There are medical definitions of retardation. There are educational references and there are psychological definitions --

THE COURT: Doctor, can't you in a few words give us what you understand to be mental retardation?

THE WITNESS: I think I can.

THE COURT: Well, suppose you do that.

THE WITNESS: Again, from the same reference, mental retardation refers to a sub-average general intellectual functioning which originated from the developmental period and is associated with impairment in adaptive behavior.

THE COURT: Thank you.

THE WITNESS: Each of those terms is defined in further definitions.

BY MR. KUNSTLER:

Q I understand, but that would be a suitable working definition, would it not, in general?

A Yes. I think, if there is an important concept here, it is probably that mental retardation is not a static condition.

THE COURT: I think you are suggesting, as I understand it, that mental retardation can be organic or can be social?

THE WITNESS: And further that it can be reversible.

THE COURT: Even where it is organic?

THE WITNESS: Even where it is organic.

THE COURT: All right. Thank you, Doctor.

BY MR. KUNSTLER:

Q Now, Dr. Justison, would you just indicate briefly your experience with the Washington, D. C. School System with respect to the teaching of what you would call mental retardates -- would that be a proper term?

A Yes, I think it is a proper term. I am not sure which part of my experience you are referring to.

Q Well, I would like to know what experience you have had insofar as the Washington, D. C. School System is concerned, the public school system, in its treatment of those whom we know as mental retardates, students meeting that

definition that you have just given to the Court.

A Some information has come to me as part of my direct experience with the schools, both as a member of the Working Party on Education, as a Howard professor, and as a member of the Center for Youth and Community Studies.

I think I should probably make very clear I have been not simply a critic of the basic track, but that I have tried to make a contribution to correcting some of what I see as ineffective operation being aware of the overwhelming difficulties that this urban community faces.

So I have served really officially as a member of the Working Party and I have served as a volunteer professional and as a connected professional starting in the fall as one of the members of the staff, for instance, in the Teachers Corps program to train and orient pre-service teachers in educational programs.

I have been a member of the staff of the NEA Reading Institute which has some connection here and I have also been a lecturer in Dr. Davidson's NDEA workshop so that some of the information has come to me directly from experience with professionals in the schools and other information by

assignment.

Q This is in the Washington Public School System?

A Yes.

Q Now, have you also had experience with some aspects of the same system in connection with the preparation of what I might call special teachers?

A Yes.

Q And I define them as teachers teaching special education.

A Yes.

Q Which would involve mental retardates? Is that correct?

A Yes.

Q Would you indicate to the Court if you had any experience that would give you knowledge of the preparation of special teachers teaching for example the basic track in the Washington, D. C. School System?

A I suppose my best information, or the only source really of official information here, would have been the report by the Council for Exceptional Children for 1964 to 1965 and 1965 to '66 -- that is a special project report that is

referred to in Dr. Davidson's testimony.

Q The special project which Dr. Davidson testified to?

A Yes, sir.

Q I would like to show you the report, which I believe is A-12, which bears your name, and ask you whether you were one of the compilers and authors of this report?

A Well, I think it is necessary for me to explain that I deliberately, because of my professional association with some of the teachers who are my students at graduate level, and also because this was a study done on and by the professional peers, I asked not to be involved except with the statistical analyses. I didn't want to see the data and have not seen the data -- the raw data.

Q The raw data, but you were furnished with this report?

A Yes, simply the numbers that Mrs. Paper brought to me as a result of this.

Q That would be the numbers involved in what?

A The course that the teacher teaches had -- what courses the teachers had had.

Q And whether they had their degrees and their years of experience and so forth?

A That's right, just as is published in this report.

Q About how many special education teachers, if you know, was the questionnaire, which has been offered into evidence as A-11 for the Plaintiff, sent, to all, or some or what?

A As far as I know, the questionnaire went to every employee who was considered to be a special education teacher.

This would include the basic track teachers, the deaf, the blind, the cripple, severely retarded, emotionally disturbed, et cetera.

Q And how many responses were received back from the figures that you received?

A I think the totals were based on 272 responses.

Q And those responses in respect to the questions that were asked, questions one through five on the information in A-11, were given to you -- the numbers?

A That's right.

Q As the responses to each question?

A That's right.

*Handwritten in margin:*  
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Q And it was on the basis of those figures that this report was filed, then, is that correct?

A That's right.

Q With you and your fellows who I understand were the teachers in the District of Columbia System?

A Yes, sir.

Q And Mrs. Paper?

A Well, it was Mrs. Paper and Mrs. Mitchell who were the teachers in the District System.

Q And Mrs. Mitchell, and yourself?

A Yes, we had analyzed these figures.

Q And the general conclusions, what general conclusions did you come to with respect to the special teachers who had responded?

A What general conclusions?

Q That's right.

A Did I come to -- that by and large, despite the fact that there were many well-prepared special education teachers, the great majority were not specialists by ordinary standards.

Q And what did you find was lacking, I know the report



will speak for itself, but in your field of expertise, what did you find was lacking which would qualify or fail to qualify such teachers for special education?

A I think I can give two answers, or one, since there is a notable lack of supervised practicum and, secondly, that academic qualifications required by States and by national standards have not been met.

Q When you are talking about the lack, is there a standard as to credits in special education for a teacher in that field that they should have?

A There is a licensing standard for the District of six credits in general teacher preparation as against the requirement of a minimum of 18 in the neighboring area of Maryland and a minimum of 27 credits in the neighboring area of Virginia.

Q Now, Dr. Davidson --

MR. CASHMAN: Excuse me, Your Honor, but so that we will maintain consistency in this record, it has been the position of corporation counsel that this law suit involves the District of Columbia system only and that comparisons with surrounding counties are not relevant and not material.

Therefore, on behalf of defendant, we would object to that portion of the witnesses statement which just related to a comparison.

THE WITNESS: I am sorry, I didn't --

THE COURT: Oh, no.

MR. KUNSTLER: You don't have to concern yourself with that.

THE COURT: It is overruled.

BY MR. KUNSTLER:

Q Dr. Justisen, you have indicated that the District requirement is six credits for a special teacher?

A Yes, I might add here that we have in the teacher education section of this same planning group, requested many times that we be furnished official documents on the certification and licensing requirements.

We have not been able to get them. I have not been able to get them since I have been involved in this, but we do know from the United States Office of Education that six requirements are listed and Mrs. Louise Steele who is a member of this Committee was also able to confirm this six credit requirement is still in effect.

THE COURT: And she is also a member of the Board of Education, is that correct?

THE WITNESS: Yes.

BY MR. KUNSTLER:

Q Now, in a system which only requires six grades of special teacher training above and beyond the ordinary teacher training, does that number of credits give a teacher, in your experience, anything but lecture courses rather than supervised clinical experience?

A In my experience, no. In most States a practicum of six credits is a requirement.

Q Do you think that in order to have what you would consider to be proper training for a special teacher, that teacher should have supervised clinical experience rather than merely lecture credits?

A Indeed, yes.

Q Now, Dr. Justison, you are familiar, are you not, with the District of Columbia Teachers College?

A Yes, I have some knowledge of that college.

Q Do you know whether the percentage, or what percentage of the teachers in the District of Columbia System

come from Teachers College?

A I couldn't give a definitive answer to this. It would have to be hearsay and I understand that that is not allowed. I think it is rather popular knowledge that most of our teachers are District trained, but I wouldn't want to be quoted on that.

Q Is it not correct from your observation and research, as far as Teachers College is concerned, that it is unable to grant any graduate credit which is recognized by local universities within the District of Columbia?

MR. CASHMAN: Your Honor, counsel persists in the line of leading questions that puts the answers to the questions in the mouth of the witness. I know a certain amount of latitude with respect to leading questions is perfectly proper, but Your Honor, this kind of questioning merely requires an acknowledgment on the part of the witness and I think it is wrong.

THE COURT: Well, it is permissible to lead experts, but I think it would be preferable for the witness to testify rather than you lead.

MR. KUNSTLER: I will withdraw the question, Your

Honor, and put it another way.

BY MR. KUNSTLER:

Q What is the status of the District Teachers College with reference to certification or accreditation?

A I cannot again answer that definitively. As I understand it, it is an accredited undergraduate teacher preparation institution limited to undergraduate credit.

Q When a teacher graduates from the District of Columbia Teachers Colleges, is it possible for that teacher -- I will rephrase the question. What does the teacher receive, if you know, is it a degree, or is it a certificate?

A It is a degree.

Q It is a degree. Now, armed with that degree can the teacher then go into the public school system of the District of Columbia and utilize credits received at the Teachers College for certification as a teacher?

A For a license as a teacher, yes.

Q For a license as a teacher?

A Yes.

Q Now, Dr. Justison, does the District of Columbia Teachers College provide special education for prospective

elementary teachers?

A They do have a sequence of offerings in the secondary field only.

Q But not in the elementary field?

A They have no elementary school offerings in the special education field.

Q So if the graduate of the D. C. Teachers College wanted to go into special education and wanted to have additional courses, or any course in that field in elementary level, he or she would have to go somewhere else, is that correct?

A Yes.

Q Now, is it possible to go somewhere else for a graduate of the D. C. Teachers College?

A Yes, as a matter of fact it should be a matter of record and is, if the evidence of this report on the mental retardation planning committee is accepted or admitted, it is a matter of record that the consortium of colleges, the five Washington, D. C. universities and colleges, plus the University of Maryland, have gone all out with the approval of the appropriate deans in supporting the efforts of the

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D. C. Teachers College to train their graduates.

This was an agreement reached last year. It was stimulated by the Committee on Teacher Education and the staff has been so informed. Every member of the personnel in special education departments of all institutions have made themselves available to the District.

Q Dr. Justison, are there any graduate courses given at the D. C. Teachers College, if you know?

A I know that many teachers who already hold a bachelor's degree take work at the D. C. T. C., but I think it is recognized only locally. I think it does give them credits towards advancing in status. It may give a salary differential, but it would not accord university credit, I don't believe the District College is accredited as a graduate school.

(Whereupon, A-14, Plaintiff's Exhibit, was marked for identification.)

BY MR. KUNSTLER:

Q Now, Doctor, I show you Plaintiff's Exhibit A-14 for identification and I ask you what that document is?

A This is the June 30, 1960 report on the current status of mental retardation planning for the District of Columbia.

Q Are you familiar with the particular report?

A Yes, I am.

Q Do you have any experience with that report whatsoever?

A Yes, as I testified this morning, I am a member of several committees and have had the opportunity of serving on several sub-committees who reported here.

Q Would you describe to the Court what, in general, that report is and what it encompasses?

A It is the official documentary evidence of the work of the Group of Interested Professional and Lay Participants on the Planning for Mental Retardation in the District of Columbia.

I don't know that I can give you exactly the figures of the members involved, but there are 23 standing committees and each has been actively surveying, objectively as possible, the status of the facilities and services for the report of this group in this area.

Q Was that under the supervision of any official agency of the District of Columbia?

A It has been accomplished as an operation of the Department of Public Health under the direction of Dr. Mary Grant -- I believe on grant from the United States Public Health Service.

Q Does it pertain at all, or refer at all, to the District of Columbia Public School System?

A It has a great deal of reference to the public school system.

Q Does it refer to the question of mental retardates in the District of Columbia School System?

A It does.

Q And there is other material, is there not, referring to other areas such as St. Elizabeth's Hospital in this?

A Yes.

Q Thank you.

MR. KUNSTLER: I would like to offer this into evidence, Your Honor, solely as to those portions which refer to the District of Columbia School System. It is very difficult to separate it out by chapter, because it goes all the

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be so*

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way through, but it is a complete study of the entire mental retardation planning of the District of Columbia. It is an official document and if Your Honor wishes, assuming that you admit it into evidence, counsel will be glad to just delineate for Your Honor those portions pertaining solely to the District of Columbia Public School System.

MR. CASHMAN: Your Honor, with respect to such a document, I would ask that Your Honor defer ruling so that we can look at it and cross-examine the witness with respect to it.

THE COURT: Very well.

BY MR. KUNSTLER:

Q Now, Dr. Justison, as I understand it, you have had some experience and background with respect to the availability of Federal funds referring primarily to those available for special education purposes for the training of special education teachers, for example, and other things?

Would you indicate to the Court what this experience has been especially specifying the funds in question and what part you or your committee had with reference to it?

A The teacher training committee made up of

representatives from the consortium of universities, plus the University of Maryland, did have some concern with application to train teachers in the summer of 1967 and it was around a proposal written and submitted by Dr. Peter Swindler at D. C. Teachers College that the members of the Teacher Education Committee agreed to give their support in active ways to the efforts of the District of Columbia to meet in-service needs.

Actually, there are several provisions under which the District is eligible for funds both as a District school system and under the college provision from several different titles in Public Law 85926.

Q That is the Handicapped Children Act?

A Yes, about \$5,000 under each that could be funded. ✓

Q And has the Board of Education, or the Superintendent of Schools taken advantage of this, in your experience, opportunity to take advantage of all the funds available for such assistance to mental retardates and handicapped children?

MR. CASHMAN: Your Honor, before the question is answered, may it be made clear if the witness is testifying here as an expert in this field of financing this particular

they have availed themselves of.

THE COURT: Well, then, are you saying you don't know the answer to the question that Mr. Kunstler has put to you?

THE WITNESS: I would certainly not --

THE COURT: You would not what?

THE WITNESS: I would certainly not pretend to be an expert on funding or legislation. I am pretty generally informed.

MR. KUNSTLER: I will rephrase the question a little bit differently, Your Honor.

~~BY~~ MR. KUNSTLER:

Q Doctor, do you know of any particular instance in connection with available Federal funds in the area we have discussed of mental retardation and handicapped children which was not taken advantage of by the District of Columbia Board of Education or the Superintendent?

MR. CASHMAN: Now, Your Honor, despite the fact that the question has been rephrased, I still think it is necessary for the defendant to be informed as to whether or not she is answering this question as an expert in the field or whether

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THE COURT: Well, suppose she answers what she knows about it without being an expert. Would you object to that?

MR. CASHMAN: No. My objection was merely to get her status clear as to whether she was speaking as an expert in this particular area.

THE COURT: Well, we will say she is not in answering this question and that will be understood, counsel. You ~~may answer~~ the question.

THE WITNESS: As a member of the Teacher Preparation Committee, a sub-committee concerned with mental retardation planning for the District, it did come to our attention by our inquiry as a committee of six people that the District had not availed itself or made its requests for funds that were available under Public Law 85926 as amended. <sup>when amended</sup> Now, this law directly relates to the previous year's amendments where the District would not have qualified, but under the present provisions as amended the District could apply for funds in two ways, both as a District school system for in-service training of personnel to work with the disadvantaged youth and also as a District college.

We simply raised the question so that we could help

the Superintendent with his application. It was quite incidental and accidental that the question was answered in the negative and then we exerted our influence as a committee with the United States Office <sup>which office</sup> to obtain a delay so that the District could then apply for the available funds.

Q And did they so apply? *✓ our people*

A I have never been able to determine, but I do know that they are offering two summer programs currently and so I would assume that they were funded under some one of the titled of the public law.

Q When you discovered that this money was available which had not been applied for by the District, did you discuss or did you discover how much was available?

A I don't think I have the exact figures, but it should certainly come to \$400,000, or in that neighborhood.

Q And you are assuming from the fact that the courses *✓* are now being given that they did finally make the application?

A I am presuming so. We have tried to find out, but we haven't been able to.

Q Now, Dr. Justison, in your investigation into the the programs for the mentally retarded, did you ever discuss

anything with reference to whether retardates are eligible in the District of Columbia for vocational education?

A I learned in a different connection that pupils in the basic track would not be eligible for occupational and vocational training as offered by the five vocational high schools.

Q Do you have any idea of how much of an IQ is needed -- do you know the required IQ by the District of Columbia Public School System in order for a boy or a girl to get into vocational high school?

A Mr. Volland, who is in charge of that program for the District Schools, is a member of this committee and did report to us, I think early in April, that a few mildly retarded youngsters were being absorbed into some of the programs, but essentially, to be eligible for placement in the vocational programs, because of space limitation and others, the youngsters must present evidence that they can meet the general requirement for the general track which would be borderline, you know, 90 or 100. ✓

MR. CASHMAN: You dropped your voice, Doctor, and I did not hear that last part.

THE WITNESS: The general borderline IQ is required. They would have to meet the requirement of the general track and that would be in the neighborhood of 90 IQ or a hundred IQ.

BY MR. KUNSTLER:

Q Now, Dr. Justison, does the District of Columbia Board of Educational School System maintain a Director of Special Education at say a policy level?

A By policy level in this case you mean in the rank of Assistant Superintendent?

Q Rank of Assistant Superintendent, yes.

A No, I think the plan of organization that we were given has a title of Special Education Director, or Director of Special Education, but not at that administrative level.

Q And who does supervise the Special Education Program of the D. C. Public Schools?

A Well, for many years Mrs. Jones was the Director, but she has retired now.

Q What was her title?

A Her title was Director of Special Education.

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Q And, Dr. Justison, are you familiar with other cities and the way this post is treated in other cities?

A Yes. Across the country there are many variations in the administrative structure, but most of the major cities have either divisions or departments which are headed by administrative personnel and staffed with supervisor personnel. This covers a wide range of services, you well understand.

Q Dr. Justison, I have just one or two more questions: In your study of the mental retardates of the District of Columbia School System, did you make any effort to discover what or how the emotionally disturbed, or the severely mentally retarded or the mentally ill children were treated vis a vis those who we have defined as mental retardates up to now, the people in the basic track?

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of D.C.  
in D.C.*

A My most intimate connection with the system has been in the area of the severely retarded youngster. This is probably my major interest because Mrs. Jones and I both started in the field of the practicum beginning in 1954 and she was faced in September of 1963 with the problem of having to orient and train teachers who had been placed in the new schools for the severely retarded.

Apparently there was funding available for staffing and there was space available in the underpopulated schools so that a program for the severely retarded youngsters could be implemented.

I then offered my services through Howard and she asked me to work with this group which I did, and we had a long association with about 20 of these teachers so I have more knowledge of this program by direct experience than I do of any other.

*what did you do?*

*of severely mentally retarded?*

Q Now, then, Dr. Justison, have you found the basic track contains emotionally disturbed and severely retarded children as well as what I will term, for the sake of convenience, normally mentally retarded children?

*How many?*

MR. CASHMAN: If Your Honor please, there has been no foundation whatsoever in this record with respect to this witness in which she has been related to the basic track in the District of Columbia School System. Her field has been shown to be mental retardation, essentially in the field of severely mentally retarded children, but there has been no basis laid as far as her knowledge of the basic track is concerned.

THE COURT: I will sustain that objection. You may proceed to try and lay a basis.

BY MR. KUNSTLER:

Q Dr. Justison, have you studied or made any study whatsoever or research into the composition of the District Of Columbia Public Schools?

A We made such an effort as a working party.

Q And would you describe to the Court what your efforts consisted of?

MR. CASHMAN: Excuse me, Your Honor, but this has been characteristic of a lot of the testimony of this witness. Mr. Kunstler asks her for her opinion and she will respond that we as a committee or my committee achieved this particular result. Now, Your Honor, there is a committee report which you will presently consider as to whether or not it will be admitted into evidence and of course in that case it would speak for itself, if it does come in, but I do think that for this witness to lay a proper foundation, she has to say to this court that she herself is aware of whatever the question concerns before she can say what her knowledge is. She cannot translate her knowledge from the knowledge of the committee and

that is my objection, Your Honor.

THE COURT: Could you answer the question on a personal basis, on the basis of your own experience?

THE WITNESS: With some categories, I could, yes.

THE COURT: Well, suppose you do that, please -- just with reference to your own knowledge and experience.

THE WITNESS: My own knowledge and experience would lead me to believe that --

MR. CASHMAN: Your Honor, I thought the nature of my objection was that I would like to know as an incident to the foundation for her answer, what her experience has been.

THE COURT: Well, suppose you give counsel what he wants to know, Dr. Justison, please.

THE WITNESS: I have been trying to determine this.

THE COURT: I think he wants to know, Doctor, on what basis you have found out whatever you have about the makeup of the basic track with reference to mental retardates, severely retarded children and so on.

THE WITNESS: There has been an abundance of material submitted to this working party on the request of the committee and with the consent of the Board of Education and for many



officers on the committee and these materials supply a direct dissertation plus seminars, plus training sessions and so I get certain information from my own observations and other information has been brought to me from other places and where I had concerns and I wanted information it has been supplied to me with any other facts I required so on that basis, may I answer the question?

THE COURT: Well, the question is this, Doctor: What is the makeup of the basic track as far as you know with reference to low IQ's, high IQ's, mental retardates, severely retarded and so on.

THE WITNESS: The basic track may contain youngsters who would ordinarily be classified as severely retardates. It maybe contains and probably does --

MR. CASEMAN: Objection, Your Honor, as to what may happen or what probably happens. This witness should tell us what is happening.

THE COURT: : What is the basis for you statement that it may --

THE WITNESS: I think my basis would be found in the definition of mental retardation itself which in the

definition I read, it includes adaptive behavior. I know of no severely retarded child who is not disturbed. I know of no seriously disturbed child who is not <sup>and academically</sup> somewhat academically retarded.

BY MR. KUNSTLER:

Q I think what counsel wants to know is, as you are making certain statements, using the word "may" and "probably," do you know from your own observations and research that the D.C. Public School System and particularly the basic track, whether there are in fact in the basic track to your knowledge, from information gathered by you or from whatever source, children who are what we would call severely disturbed or severely emotionally disturbed or severely or seriously retarded?

A Yes, sir. *How many?*

Q Can you testify to that?

A I certainly can't give you the names -- I don't know --

Q No, not the names.

THE COURT: Would you rephrase the question.

MR. KUNSTLER: Yes, sir. I am going to show you

Plaintiff's Exhibit A-13 and ask you whether that profile shows, using the IQ's, if that is the proper determinative factor, what type of children there are in accordance with the question, as related to seriously retarded, or seriously emotionally disturbed as against the retarded in Randall Junior High School on the date of this profile?

MR. CASHMAN: If Your Honor please, that profile, if I understand it, has not been presented in evidence. It has been identified and perhaps it was offered, but there has been no examination either by a deposition or cross-examination on that particular document and so I do not think at this time it is proper for the witness to read into the record evidence from such a document.

MR. KUNSTLER: Well, it was my understanding that we would strike testimony if Your Honor threw it out.

THE COURT: As I understand it, the question is whether or not that profile shows retarded or severely mentally retarded or emotionally disturbed students, is that correct?

MR. KUNSTLER: Well, I don't think I mentioned disturbed, Your Honor, but I asked could she tell from the profile, primarily from the IQ's, whether these children would be classified as retarded or seriously retarded.

THE COURT: Could you tell that from the profile?

THE WITNESS: Yes, sir.

*N.B. - Show me!*

THE COURT: The objection will be taken with the question and the Court will rule on the objection after it rules on the admissibility of the exhibit, A-13. Now, you may answer the question, Doctor.

THE WITNESS: The profile does contain evidence of retardation by the District's own measure of retardation in IQ, by the District's own classification of IQ differences between mildly or educable mental retardates, severely mentally retarded.

There is also evidence that there is at least one case, and I have not reviewed this item by item, of severe retardation in the basic track.

*when is it?*

BY MR. KUNSTLER:

Q What is that standard of severe retardation pursuant to the IQ factor?

A May I check the data on this?

*what data*

Q Yes.

A Severe mental retardation, the IQ cutoff is 35 to 55.

Q Well, have you found IQ's on the profile which are less?

Q And where is this standard contained?

A This is an official publication of the District of Columbia School System, I think under recent date, called "Classes in Special Education, Kindergarten to Grade Twelve," outlining criteria for admission and giving some methods and comments.

Q Doctor, is that an official document you received from the Board of Education?

A As supplied by the Working Committee on Education, yes.

MR. KUNSTLER: I would like to offer that document into evidence, and then I have only a few more questions.

THE WITNESS: It is a part of the report, the pink report.

Q Oh, it is in the pink report, also, that has been offered, that I think is A-10? What page is that on, Doctor, in A-10?

(21)  
A Page 19, I believe, in the pink report, but I would have to check.

MR. CASHMAN: May we have the date of it, Your Honor?

THE WITNESS: There are several different ones. I don't see the date on this.

MR. KUNSTLER: What page is it?

THE WITNESS: 21. 2-1, classes in basic education are listed on the same page with IQ 55 to 85.

BY MR. KUNSTLER:

Q Now, Dr. Justison, just one more question with reference to the profile which you have in front of you. Does that document indicate when each student was last tested?

A Yes, it does.

Q And did you find many instances on there indicating as much as five or six years since the last test?

MR. CASHMAN: Your Honor, I would object to that on the same ground. It is not in evidence.

THE COURT: Same ruling.

You may answer the question.

THE WITNESS: Yes.

BY MR. KUNSTLER:

Q One more question, there are a great many tests indicated on that profile, is that not correct?

A There are a number of tests.

MR. KUNSTLER: Your Honor, at this time we would like to call Dr. Haynes to the stand.

MR. REDMON: May I inquire, Mr. Kunstler, whether you are calling Dr. Haynes as an adverse party?

MR. KUNSTLER: I guess I am calling her as an adverse party, I guess I must. She is an adverse party.

THE COURT: All right.

Thereupon,

**EUPHEMIA HAYNES**

was called as a witness for and on behalf of the Plaintiffs, and, having been first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. Kunstler:

Q Dr. Haynes, would you state your full name for the record, please?

A Euphemia L. Haynes.

Q And you are President of the Board of Education?

A Yes.

Q Of the District. And how long have you been President of the Board of Education?

A Since July 1, 1966.

Q And Dr. Haynes, when did you first come on the Board of Education?

A In 1960.

Q Do you remember the month in 1960, Dr. Haynes?

A I think it was April -- I am not absolutely sure about that month date, but it is a matter of record.

Q Dr. Haynes, would you just state for the record your background?

A Well, I have a Bachelor's degree from Smith College, a Master's Degree in Education from the University of Chicago, a Master's and Doctor's degree from Catholic University in mathematics, Master's degree at Chicago was in Education.

Q And Dr. Haynes, in addition to your service on the Board of Education, what is your occupation at this moment?

A I have retired from the Teachers' College where I was the Chairman of the Division of Mathematics since the beginning of the college.

Q And when was the college --

A About 1930.

Q When did you retire, Dr. Haynes?

A 1959.



Q Now, Dr. Haynes, with particular reference to the so-called track system which is in effect in the District of Columbia school system, as I take it, you have been an opponent of the track system for sometime, is that correct?

A I have.

Q And you have made this position public on many occasions, have you not?

A As early as November 1963 I made the first presentation to the Board relative to the dangers involved in the track system.

Q And I show you Plaintiffs' B-7 and ask you if this is the statement to which you have references?

A This is.

Q May I have this marked, Mrs. Duffy, please?

DEPUTY CLERK: Plaintiffs' B-7 for identification.

(Plaintiffs' Exhibit B-7  
was marked for identification.)

BY MR. KUNSTLER:

Q Now Dr. Haynes, does that statement which is B-7 for identification, does that statement reflect your feeling about the track system today as it was then?

A Definitely. I made another statement in December of that year in which I stressed the value of the self-image and the value of and the detriment to the self-image by a

young person that is incurred by the track system.

Q With reference to what is in the statement of November 20, 1963, and forgetting for the moment any further statements, is the statement of November 20, 1963 still your opinion today as far as it goes?

A Definitely. ,

MR. KUNSTLER: I would like to offer it into evidence, Your Honor.

MR. REDMON: Subject to cross examination.

MR. KUNSTLER: Subject to cross examination.

Dr. Haynes, in the statement which I have read, you are discussing your opposition to the track system in terms basically of the fact that it is an undemocratic system?

A Yes.

Q Now, Dr. Haynes, with reference to its --let me withdraw that--. Dr. Haynes, you are quite familiar with the school system and you visited many schools?

A I have taught in the school system since 1915 all the way through the high school for many years before I taught in college.

Q In fact, you were teaching in the system when it was a segregated system?

A Yes.

Q Dr. Haynes, you are a Negro are you not?

A I am.

Q Dr. Haynes, in your capacity as a member of the Board of Education since 1960, have you had opportunity to watch the track system in operation?

A Yes, I have, I have studied it very closely and I have studied the expressions of educators in the field relative to it before I brought anything to the Board of Education.

Q Now, in addition to the statement which you made on November 20, 1963, our B-7 exhibit which, as I have indicated, talks in terms of democracy or lack of democracy with reference to the track system, with particular reference to its effect on both Negroes and impoverished disadvantaged children, whether they be Negro or White, have you come to any conclusion from your observations of the school system as to whether the effect of the track system on such individuals

MR. REDMON: --I am going to object, Your Honor, this calls for a conclusion.

THE COURT: Are you asking the witness to testify as an expert from her experience with the schools as a teacher and as a member of the Board?

MR. KUNSTLER: That is c orrect, Your Honor. I think in that sense she is certainly in the same capacity as Dr. Hansen both from her background, her long experience in the school system, her close observations, her reading of material as she has testified to, and her deep interest and concern in the main aspects she has been concerned with as she testified to.

MR. REDMON: I'd like to know, Your Honor, what field she is going to testify in.

THE C OURT: You are offering her as an expert in what field, sir?

MR. KUNSTLER: As an expert in the District of Columbia track system as it exists and as she has seen it and observed it in operation, not track grouping in general.

MR. REDMON: I object to it, Your Honor.

THE COURT: You may examine t he w itness with reference to her qualifications as an expert in this particular limited field which counsel has indicated. If you want to reserve your examination until cross you may do so, otherwise do it now.

MR. REDMON: I would prefer t o wait.

A Definitely. We had an open meeting in which a number of people brought observations relative to the track system. I have heard many statements from those people who are in the community as parents, also from teachers in the community who are dealing with the problem, but personally I have not dealt with it.

Q Have you had any discussions with any of the educational people in the District of Columbia outside of the school board, people at Howard, for example, and other institutions?

A Yes, I have, and I have a number of documentations on this before I brought this question to the Board.

Q Have you read any material about the track system as it operates?

A I have read a number of opinions of educators in the field relative to the track system, relative to ability-grouping.

Q To get back to my question of sometime, Dr. Haynes, which I will rephrase for you, in addition to your opposition to the track system on the grounds it being undemocratic in your opinion, do you have any opinion as to what any opposition you might have to it with reference to its operation on Negroes

in schools, for example, which are predominantly Black or on poor Whites in the District of Columbia, have you come to any conclusions?

A Very definitely. When I opened this discussion I pointed out that the basis upon which the division is made is not valid in this city in the way it is used. In the first place, the IQ for grouping --separating into groups-- has been discarded as early as 1943, and I quoted at the time Dr. Stoddard who had then an article in Phi Delta Kappa and produced that article for reference in which he points out that this is true, in addition to the question of grouping on a basis of IQ, the use of the standardized tests, whether they be in one field or another field, are not valid measures, are only valid measures for the middle class Whites because they can only be valid for that group which was used in making the standardization, and there are not Negroes involved in those standardizations, the lower class Whites are not involved. This is mainly a middle class White standardization and therefore the standardized tests have been shown to fail to measure the true ability of a child.

Another thing which I pointed out and basis for my disagreement very severely is the fact that there is an area in which everyone will fail, anyone will fail, and there

is an area in which he will succeed. Therefore, it is impossible to classify into groups persons with such wide variations in ability by different fields of endeavor. For example, a person may be very skillful in science and mathematics, that same person may be very weak in English. A person may be very skillful in its writing in English but because of the abilities there found, his directness is limited in the field of mathematics or science and he doesn't measure equally in that field. Therefore, a test which classifies all pupils into a category is an unfair test because it doesn't recognize varying abilities within the same individual. ✓

Q Dr. Haynes, would you say in your experience here in the District of Columbia, that in your opinion, the track system as it is in effect in this city is unfair or discriminates against Negro children in the school system?

A It very definitely does. You will find that a very large percent of Negro children in the basic track. This is most unreasonable to expect to find these children. I have been a teacher in the public schools of the District <sup>of</sup> Columbia, I have handled a very large number of Negro children in this city. I could not begin to say or give you the extent of the young people who have gone through the schools here and who

have attained reputations, who have achieved major assignments throughout the nation, to say that they a few years later, the very large percentage that we have of Negro and children, is in the basic track/is simply something that one can't possibly believe, and there is certainly something moving against them that is not in evidence.

MR. KUNSTLER: Would you pardon me, Your Honor? May I just take one minute? We have a problem. (Mr. Kunstler and Mr. Anker confer.) This involves the Prince George man, Your Honor, he is leaving now and we are trying to work out something.

Your Honor, can Mr. Anker approach the Bench for a moment?

THE COURT: He may.

MR. ANKER: Perhaps we ought to ask Corporation Counsel here too.

THE COURT: Seep up.

Whereupon counsel approached the Bench and the following proceedings were held:)

MR. ANKER: Here is where we are, sir. Mr. Nussbaum suggested he would be willing to supply the information we



BY MR. KUNSTLER:

Q Dr. Haynes, with reference to the track system, are you prepared to state what you think is the purpose of the track system or its effect in terms of the race or economic level of the pupils in the District of Columbia school system?

THE COURT: I think it would be preferable to divide the question up, first, as to race, then as to economic level.

BY MR. KUNSTLER:

Q I'll rephrase the question and would like to know what you think the purpose of the track system or its effect in terms of the race of the pupils affected by it?

A I can answer the second part of the question more easily, the question about purpose, if I may direct my answer to that first.

To effect, as I said before, its impossible, the curriculum is decided early in the child's life. He cannot move forward, everything is based on what he cannot do rather than what he can do. He cannot think in terms of directing his life. And therefore he is disadvantaged as a very young child from considering himself as an individual American citizen who must adjust, who must understand himself, what he

can do, where he will go, what his possibilities are, as well as understand those with whom he must live and those with whom he must work. It is equally detrimental to the honor student as it is to the disadvantaged youngster. But very definitely is it unfair to the disadvantaged youngster because here you do not have the parent ready to challenge what is being done, the parent has faith in the school system that is being supported, he is unaware and has his faith in the teachers, he is unaware what is happening to the youngster. And it is a very, very unfair thing to the young people.

Q And with reference to the portion of the question dealing with race, upon whom do you think does the burden of the track system fall?

A The burden definitely falls on the Negro race, on the Negro group.

Q Now the second question I asked which was the same question except I substituted for the term the term economic level of the student concerned?

A The same is true of the economic level because this is a situation in which one must defend himself and one doesn't expect that from his public school system, but he must be on the defensive and protect himself against this if it is possible, and it is not possible for him to move his child out of the lower track unless he makes a very quick move and finds he

has been misplaced. IN that case he has a chance of moving forward, but we have today a group of children who are not in the basic track because it has been found that they did not belong there but they cannot go into the regular stream because they are not ready for that. (developmental stream)

Q Dr. Haynes, are you prepared to answer the other part of the question which was the purpose in your mind of the track system viz a viz race or economic grouping? What do you think was the purpose?

A As I said, I was not on the Board, I heard none of the discussions when this was opened up, I did not know about this. I was in the college and was not in contact with the tracking and I was not involved in the discussions. But this has been characterized by writers as a means of segregation.

MR. REDMON: Objection, Your Honor, she is testifying to her conclusions. We want to know why she says the purpose is segregation.

THE COURT: Doctor, can you tell us anything that has happened with reference to your experience on the Board which indicates that the purpose of the track system, and more particularly the basic track is to keep Negroes together or to keep disadvantaged Whites together? Lets try Negroes first.

A Certainly if we find the larger number of basic tracks, most of the basic tracks, where the Negroes are found, it does achieve separation on the basis of race. If this were not its purpose, then why would it have been -- why would we find this type of classification - -

MR. REDMON: I would object to that response, Your Honor.

MR. KUNSTLER: I think it is an inference, Your Honor.

THE COURT: That is your inference that the track system has been mainted? In other words, you state the track system separates the races or has the general effect, and as I understand it you impart from that, since that is the effect it must also be the purpose?

THE WITNESS: That is right. I was not a part of the construction of the purpose and that is the reason I don't see how I can say this was precisely the purpose, but in view of what I see, in view of what has happened, in view what has operated, it is before us every day, it is segregation according to race.

Q Dr. Haynes, since you have been on the Board, has Dr. Hansen in any way brought to the Board's attention any

other alternative to the track system for its consideration?

A No, Dr. Hansen has not. ✓

Q Dr. Haynes, at the Board meetings that you have attended, did the Board discuss at all, any of the meetings that you have attended, and when I say the Board or any member of the Board, ever discuss the race of either the administrative or teacher personnel in considering appointment, promotion? Was it ever brought up?

A The question of race has been brought to the Board.

MR. REDMON: I am going to object to the answer of that question, Your Honor. I understood her testimony was to be limited to the track system, now we are discussing teachers. Are we broadening this field of testimony?

MR. KUNSTLER: I don't think I said it would be wholly limited to the track system.

THE COURT: This is the president of the Board and I don't think counsel or anyone else should be restricted in asking this witness any questions about this Board relative to the law suit, so I'll overrule the objection.

BY MR. KUNSTLER:

Q I'll rephrase the question also, Doctor, to make it

it more explicit. How are promotions and either promotions of teachers or other people within the system --transfer or initial appointment-- brought to the attention of the Board? Who does that?

A The Superintendent brings his recommendation after the examination is completed. He brings his recommendation to the Board.

Q And then the Board then either approves or disapproves the recommendation?

A That is right.

Q In any instance since you have been on the Board have they disapprove a recommendation by the Superintendent?

A They have in one or two occasions.

Q And in the presentation of this to the Board by the Superintendent or in the discussion of it by the Board prior to voting, has any mention been made of the race of the new prospective appointee or transferee or person to be promoted?

A No, there has not, to my knowledge been any mention of the race of the candidate or person being promoted, or discussion of race surrounding it. ✓

Q Dr. Haynes, was it generally understood on the Board, if you know, that there were certain schools in the system which would, for example, always or almost always have a White principal such as the Northwest schools, what we call predominantly all White schools?

A Would you rephrase that?

Q I'll ask the question another way. Was any proposal ever made by the Superintendent for the appointment of a Negro principal for any of the predominantly all-White schools in the District that you recall?

A I don't recall.

Q Do you know, Dr. Haynes, that there are some schools in the District which are referred to as predominantly all-White?

A Yes.

Q I'll talk about the elementary schools very briefly.

(At this point there was a change of Reporters.)

Q Dr. Haynes, in the schools which are known as predominantly white schools, do you know of your own knowledge what the overwhelming racial composition of the teachers in those schools is?

MR. REDMON: Your Honor, I object to the question. It is leading in nature.

THE COURT: The objection is overruled.

BY MR. KUNSTLER:

Q The objection is overruled and you may answer the question, Doctor.

A I don't think I am really prepared to answer that question.

Q All right, Dr. Haynes. Do you know of your own knowledge why the Board, if it has not, has not applied for all of the available Federal funds that were in existence, if the Board knew about them?

MR. REDMON: Your Honor, I object to the leading nature of the question and to the classification as to what is available in terms of Federal funds.

THE COURT: Do you know anything at all about the subject?



THE WITNESS: No, I don't. I really know very little about it.

BY MR. KUNSTLER:

Q Very well, Dr. Haynes, you are familiar with what is called the Passow Study, are you not?

A Yes.

Q Or the proposed Passow Study?

A Yes.

Q And are you prepared to indicate to the Court what you believe from your observation are the broad purposes of the Passow Study -- not the purposes of the study, but the purposes of instituting the study?

MR. REDMON: Objection, Your Honor.

THE COURT: What is the purpose of that question?

MR. KUNSTLER: I just wanted to find out, Your Honor, whether the Passow Study was intended in any way to interfere with the operation of this law suit as was alleged in our temporary injunction.

MR. REDMON: If the Court please, we have --

THE COURT: We have had that matter before.

MR. KUNSTLER: All right, Your Honor.

and their abilities, in one classroom?

A That's right, yes.

Q Dr. Haynes, do you know the percentage of dropouts in Division Two classes prior to 1954?

A Do I know what?

Q Do you know the percentage of dropouts in Division Two schools prior to 1954?

A I don't.

Q Did you ever direct your attention to the problem of dropouts prior to 1954?

A We didn't have the problem of dropouts. We were not conscious of the dropout question as we are today.

Q And that was because it was just not a problem?

A That wasn't a problem at that time.

Q Dr. Haynes, have you ever heard of a so-called atypical class?

A Yes.

Q And did it exist in Division Two schools prior to 1954?

A I cannot speak with authority there, to be sure that I am accurate, but I think that it did.

Q Did you ever have such a class?

A No.

Q Did you ever teach such a class?

A No.

Q Did you have children in your class in respect to which children you determined they ought to be placed in an atypical class?

A No.

Q So that regardless of the number of students that you had in any class, since 1915 up until 1930, at least, you never found an atypical child in your class?

A No.

Q And you attempted to teach these children in your class from one end of the spectrum to the other, is that right?

A Yes. My experience was in the high school at this time.

Q I understand. Did you ever consider the percentage of children that flunked a course that you would give in mathematics in terms of a percentage factor over this period of time?

A Yes.

Q And what percentage, roughly -- I don't mean an exact figure -- but about how many would there be, a large area, a medium percentage, or a small number of children flunking out?

A I cannot give you an answer to that question.

I would say this: That it was a small number because the emphasis was on succeeding and in handling a class where you have a situation where you are constantly moving in the direction of promoting all in the class, you are quite certain that you will have a very small number who fail.

It is not difficult, even though you have a heterogeneous group, as you work with these pupils, it depends upon how much time you place with them as to the kind of results you get and I am quite sure that there was a small number. But I have no way of knowing and I would hate to give you an exact figure at this point.

Q Well, how many children would you have in a class?

A You would have, I would say, in the neighborhood of 30 pupils in a class.

Q In a class such as this, from your own experience,

Dr. Haynes, what number of children on the average would you find who were slow, slow learners?

A Well, because they have been subject to classification all through, as they go forward, if they are promoted the assumption is that they would be able to do the job of that assigned curriculum.

So that you are not dealing with people who have no hope of achieving this assignment that you have before you, and therefore, you expect a very large percentage of your class to be able to go forward.

Then it has been the custom for these youngsters not to be promoted on the basis of what they were able to do, but they have been encouraged to work overtime, or what have you, in order to achieve and if that is the custom, then you just don't have the problem in this heterogeneous class and we did follow this.

Q Let me ask you this: You know we have a so-called honors program in the District of Columbia School System?

A Yes.

Q And you know also we have what is known as the college preparatory curriculum in the senior high school?

A Yes.

Q And efforts were being made before 1954, were they, to reach the gifted child in the heterogeneous classroom?

A Oh, well, --

Q What efforts were they?

A Well, team teaching has resulted from the, well, it is a simple extension of the --

Q Dr. Haynes, maybe you misperceived my question.

A I see.

Q I have asked you prior to 1954 what efforts were being made in the Division Two schools to reach the gifted child, to fulfill his achievements as much as possible in the educational field?

A I am trying to answer that very question.

I don't know how else to start.

After you have given a lesson or a presentation of a type you find that with the time you have spent on this, you feel that now you have some people who need not spend any further time to achieve what you have attempted and you then assign them some things to attempt, reading things, opportunities for exercises in the classroom, experiences in

the classroom, that you did not expect to achieve related to the students before and so you differentiate from that basis within that group.

Q So how do you do that. Do you spend your time with the slow learner in the class?

A No, and I didn't work only with the best group in the class.

I may be spending time with the slow learner in the class and I may be spending time with the average learners in the class and I may be spending time with the best learners in the class, with individuals in the class, but the class is handled as a series of individuals and the assignments that are made to the student are those assignments which I feel are best for their growth at the moment.

Now, of course, you have those who have gone beyond the expectancy of the average in the class, and then I would be prepared to give them stimulating experiences otherwise.

Q Let us take your experience in high school with respect to the mathematics courses. What course did you teach in mathematics in high school?

A Well, I went from the beginning as a teacher of

mathematics in senior high school which meant I covered all courses of it in the senior high school.

Q Was there anything beyond algebra or trigonometry in those courses?

A Well, solid geometry and in some places calculus, analytical geometry.

Q Where were the some places where the analytical geometry or calculus would be taught?

A Where?

Q Yes.

A Well, where there was any evidence in the school that the students were sufficiently interested and sufficiently prepared to elect these courses. They were elective courses and could be elected by anyone who wanted them.

Q So that the child who considered he had the ability to take the courses could take them, elect them, and if he flunked out, he flunked out?

A Yes, sir.

Q Now, after 1954, Doctor, did you then remain at the D. C. Teacher's College?

A Yes, well, after 1954 the D. C. Miner and Wilson were



combined and I remained at the D. C. T. C. until I retired.

Q And you have retired as of 1959, was it not?

A 1959, yes.

Q Dr. Haynes, I understand that your husband was a member of the Administrative Staff of the District of Columbia School System, is that correct?

A Yes, sir.

Q And what was his capacity prior to 1954 in the school system?

A He was Assistant Superintendent in Charge of the Colored Schools, First Assistant Superintendent.

Q And after 1954, what was his position?

A Deputy Superintendent.

Q That is directly under the Superintendent?

A Yes.

Q And how long did he remain as Deputy Superintendent?

A Until retirement in 1958.

Q 1958 -- do you recall whether your husband made any complaints about the institution of the track system in 1956, 1957 or 1958?

A He made no complaints to me. As a matter of fact,

we were in different areas, different directions, and we seldom could discuss our areas. I knew nothing about administration. I wasn't in the field.

Q But as far as any criticism is concerned, you don't recall any?

A I recall no criticism.

Q Dr. Haynes, you made a statement, I believe, on direct examination that you did not believe in testing individuals by groups with respect to the reprogramming of a child in the basic track, is that correct?

A Well, if I understand your question --

Q If I understood your testimony, and I will try and repeat the question, Doctor. You say that you disapproved of the use of the group achievement tests as a barometer for the reprogramming of a child from one curriculum to another?

A From one program, or from one curriculum --

Q Yes.

A I disagree with the test as a measure of the ability of the student in any given area. It is suggested, it could be suggested, but to classify on the basis of this, I disagree.

Q You mean solely on the basis of the group test?

A Yes.

Q To your knowledge, has that been done in the District of Columbia School System?

A I disagree with the way it is being done in the District School System, whether it is solely or whether it is in agreement with or in collaboration with some other information. It is not -- it is not the proper use of the test.

Q Well, what do these tests do, Dr. Haynes, in terms of measuring achievement?

A Well, I am not allowed to use documentation here, I don't believe.--

THE COURT: Dr. Haynes, you may use whatever you want.

THE WITNESS: Well, I would like to because this has been so well said by educators in the field.

MR. REDMON: I prefer, Your Honor, to have her testimony, not an educators.

THE COURT: Well, suppose we put it this way. I suppose that there is something in there that you agree with, is that the idea?

be a fair statement?

A Are you referring to the test that a teacher may give to a group, or are you referring to a standardized test? I have no way of knowing and they are very, very different.

Q All right, I will indicate to you the standardized test now specifically used in the District of Columbia.

THE COURT: Well, since the witness has indicated that she doesn't know what tests are being used, perhaps it will be useful for you to tell her what tests you have reference to in your question.

MR. REDMON: Very well, Your Honor.

BY MR. REDMON:

Q Dr. Haynes, do you know whether any tests are being given in group standardized tests now being used in the sixth grade in the District of Columbia --

A Standardized tests are being given now in the sixth grade in the District.

Q Do you know what tests are being given in the sixth grade?

A No, I do not. I would refer you to the Department where that could be obtained, but I don't have that

information.

Q <sup>SC?</sup> Do that for the purpose of discussing any question as to the type of standardized group tests that are being given in the District of Columbia, your testimony is that you don't know what those tests are or what is the content in them?

A No, but I know what all tests do of that type. They vary very greatly and it is impossible for me to say what are the elements of those tests.

Q Is it your information, Dr. Haynes, that the standardized achievement tests, although very different, still have one common goal?

A As a goal or purpose?

Q Has it a common purpose in the standardized achievement tests as you know it?

A The tests determine the position that this, that the individuals in this group, bear to a standard that has been set up for that particular grade, whether the, however the group is characterized.

It is a very difficult question to answer because it refers to a standard that has been set up for standardized

tests and all that the measure does is to take the particular people that you are measuring and indicate how they compare to that standard for a particular area.

Let us say if you are measuring, if this is the standard test which you would use to give you the measure for a given position in reading, for a given grade, then you will get a measure of the individual in relation to that standard.

Q All right, then. I will ask you this question, Dr. Haynes: How is that standard set up?

A The standard set up?

Q Yes.

A By a large, by examining a very large number of people.

Q Throughout the country?

A Throughout the country.

As I said a moment ago, it depends upon the nature of the persons used to give the standard, because a standardization is based upon those who are involved in the standardization.

If no persons comparable to those that you are measuring are involved in making that standard, the standard

has no value in this context and that is what is going on.

This is what makes the standardized tests of value of no value.

Q All right, then. In terms of comparing the child's achievement in the standardized tests you have indicated that there is a comparison made to a standard which is compiled from all the tests made throughout the country.

A Well, now, I don't mean all the tests, I mean those tests used all over the country.

Q Well, didn't they take the results of all the tests and come out with some standard which they call a median or upper quartile and lower quartile?

A But this is in terms of those entering the tests, not the test itself. It is not a group of tests to be used, but it is those tests used all over the country for a large number of different people. This is the way I understand it.

Q So that the particular specialized or the particular standardized achievement test itself, all of those results throughout the country are compared in a median or percentage range as set up for the upper quartile, the median quartile and the lower quartile and so forth?

A Yes.

Q And is it not also a fact that the student will be compared with the achievement range of those within one school system?

MR. KUNSTLER: I will object to that, Your Honor. In order to save time, the witness has testified that she is not an expert in tests and we are going to have experts. This is certainly going to an area of real expertise on tests. We have two experts on tests who will testify later and I just don't see, really, what we are getting into here with Dr. Haynes who has admitted that she is not an expert in tests and she was not offered as an expert in tests, certainly.

MR. REDMON: She has been offered as an expert in the track system and an integral part of the track system, if it please the Court, is evaluating and then programming. Now, Dr. Haynes has indicated some objection to the method of operation in the D. C. Public School System by virtue of the fact that the group achievement tests are being used improperly and I think I have the right to examine her on whether she knows what is being actually done in the District of Columbia Public School System and how they are being compared with other norms.



THE COURT: You may, of course, continue with your cross-examination, but as the Court understands Dr. Haynes' testimony it is that these ranges are being used, these tests have been prepared for middle class whites and that they are not relevant to the culture to which they are being applied here in the District of Columbia.

MR. REDMON: Well, that is what I am trying to find out, Your Honor.

THE COURT: I think she so stated.

MR. REDMON: Because I have heard her say something about she doesn't know what test is or what is in it.

THE COURT: Well, suppose we proceed, Mr. Redmon.

MR. REDMON: May I have the last question read back, please, Madam Reporter?

(Whereupon, the reporter read back the last question. as follows:)

"Question: Isn't it also a fact that a student would be compared with the achievement range of those within one school system?"

THE WITNESS: Well, I am not sure, could I have it again?

(Whereupon, the reporter reread the question.)

THE COURT: I think counsel means that if everybody in the school system took the test then the result of that test would show relative values within the school system.

MR. REDMON: If I could clarify it even further than that, Your Honor.

THE COURT: All right.

BY MR. REDMON:

Q Let us take the sixth grade test, Dr. Haynes, the same type of standardized achievement test given in the sixth grade within the D. C. Public School System.

Is it not a fact that one child's achievement on that test would be compared with all of the others as a comparison?

A Yes.

Q Now, is it not a fact that in the District of Columbia that this is being done?

A I judge that it is being done. This is what should be done.

Q Well, do you know?

A Well, if you are asking me if I have investigated

the Department, no.

Q All right --

A I don't have that information.

THE COURT: Well, the question is do you know. Have you any personal knowledge of actually what is being done with this type of test?

THE WITNESS: Yes, I have reports that come to me from the Department and therefore I know to that extent.

BY MR. REDMON:

Q Have you ever talked to Mrs. Davis or any members of her staff at the Pupil Personnel Placement and made any complaints that this was not being done?

A I have made complaints on the way in which it is being used, yes.

Q All right. Now, with respect to the comparison of the child's achievement with others in the same grade in his own school, do you know whether this is being done, or not?

A Would you ask the question again. I didn't get the line, the direction of the question and it would help me, maybe, to answer it.

Q I am sorry, Dr. Haynes. Let us presume that there is a reasonably large elementary school that has at least

two and maybe three sixth grades within the same school and that they all take the standardized achievement test and that the results come back. Do you know whether there is any comparison of that child's achievement with that of others in his three sixth grade classes of the same school?

A Well, we have just said that this is a comparison of all the children in the school system.

Q I understand that, Dr. Haynes, and we have agreed that there is probably a comparison being made --

A Therefore, it would mean, would it not, within that school system also?

Q I am asking you, Dr. Haynes, about an isolated test of sixth graders in an old school, taking only the test for sixth graders in this case, and comparing that child's achievement with others of the same sixth grade class from that one school --

MR. KUNSTLER: Your Honor, I would like to object. I don't think there has been any testimony in this record at all that the testing in the track system is on any test scores relative to the standing within the D. C. Public School System.

It is my understanding that it was a national standard. It was an IQ standard and for that reason comparison between the school system, if they don't change the standard within the school system, would not be relevant. This is a national standard and if you don't make out, you are in the basic grade, so I don't see how it is relevant to any testimony in this record.

THE COURT: Well, it does appear that the witness is not familiar with this District system. Perhaps that is why she is having trouble answering the question.

As I understand it, counsel wants to know from you whether or not if all the sixth grade students in a particular school, which may contain three classes in the sixth grade, were given a group test, whether or not the group test would reflect the difference in the achievement in the children in that school, in the different classes in the sixth grade in that school.

Obviously, the answer has to be yes, so I don't understand what you are getting at, Mr. Redmon.

MR. REDMON: The question is, because the statement has been made by Dr. Haynes that this track system is not

curriculum, would it not?

A If by general you mean that particular group, yes.

Q Well, we will use that terminology, Dr. Haynes.

A Yes, I understand you now.

Q Now, we all know, despite all the discussion about the basic track, that 85 to 90 per cent of the students of the District of Columbia are heterogeneously placed in a general curricula, am I correct?

A No, I don't agree with that.

Q Well, would you please give me figures, then -- what percentage of the people are in the basic curricula at the present time?

A Well, I think for instance here I have the figures from the office of the Department of Research which indicate that the number in the basic track in the elementary are 2,810, or three per cent, 3.8 per cent.

In the junior high schools the number is 4,218, or 15 per cent of the junior high school population.

In the senior high school at this time 1,799, or 12.6 per cent.

So there is no way to determine precisely what is

in a particular building from these figures that I have, but this is the total enrollment this year, within the year.

Q Well, Doctor, accepting again that for the time being the documentation that you have mentioned is correct, my question to you is: What is the percentage of people in the general curricula in the over-all D. C. Public School System?

A Well, the percentage, at this particular time, the number in the general track was 69,908.

Q In the elementary?

A You said in the whole school system.

Q All right. I want to have the figures, I will add them, if you want me to, as you go along, then.

A I will be glad to give it to you by elementary. This is the elementary and I can give you those figures.

Q All right.

There are 69,000, roughly, in the general curricula, is that right?

A In the general track, not elementary.

Q How many in the basic -- about 2800 you said?

A 2,810.

Q All right, how many in honors, if there are any?

A 1,269.

Q And how many in the junior high school -- by the way, Doctor, what are the figures for, that you are just reading from, what year?

A 1962.

Q 1962?

A Yes. In honors in junior high school honors we had 1,722, in regular 22,000 -- 22,215; in basic 4,218 for a total of 28,155.

Q That's all right, I will add it up, but I am asking you now about the senior high school.

A Senior high schools 1,403 in the honors, 4,608 in regular, 6,455 in general and 12,466 in -- no, that is the total, wait a minute, basic is 1,799.

Q Well, if we add these figures, Doctor, I think you would agree with me, would you not, that the overwhelming majority of the pupils in the District of Columbia, even in high school, are in the general curricula -- even without adding the figures?

A Yes.



Q Now, let us get back to this testing.

Do you know whether or not, Doctor, just taking the general curricula course as compared with students also in the general curricula course in the same grade in these same schools --

A That would be in the classroom, is that what you mean?

Q Well, I am talking about the standardized achievement test results which correlate with the national norm -- now, the test results for every child are available to the teacher and does she then compare it with others in the same class and others in the same grade in the same school who are in the same curricula?

A I judge the teacher would. I have no knowledge, but I would assume a given teacher would, if she has access to the material which I could not answer.

Q Dr. Haynes, in the evaluation of a student, the student's record, and the evaluation to determine what is the best curricula for the child, and I am not going to argue with you at this point about what is the curricula, but let us assume for the purpose of discussion that there is an

evaluation to determine whether a child should take basic curriculum, general curriculum, or honors in elementary, or, as we go into high school, general, regular, basic or honors, do you think it is a proper fact in evaluation to consider this child's scholastic performance -- is that considered as one of the factors in evaluation?

A Obviously, I do.

Q And do you believe, or do you agree, that a group standardized achievement test may also be a factor which one would consider in making an evaluation as to what curricula a child should be entered in?

A No, I do not.

Q Well, we are back to standardized achievement tests, Doctor. You mean you disagree that a teacher or qualified psychologist should, as one factor, compare the child's progress with others in the same grade level?

MR. KUNSTLER: Your Honor, I object to the question. I don't think the question is relevant to the preceding question.

The statement was that she disagreed with the use of achievement test scores as a determinative factor and now

he is putting in a psychologist, et cetera, and I don't think that was part of the material presented to her.

MR. REDMON: Well, I don't think you have been following Dr. Haynes' testimony.

MR. KUNSTLER: I have been listening very carefully.

THE COURT: Would you rephrase the question, Mr. Redmon.

BY MR. REDMON:

Q Dr. Haynes, you indicated that the evaluation of a child for programming, and let us use your word, to save time, would include, as a factor, the consideration of the scholastic performance of that child, and I have asked you whether the results of the standard achievement test, if compared with others in his present curriculum, in his own school, or in his own class, all the national norm, or all three, would not be at least a factor in evaluating the child?

A No. If I may enlarge on that?

THE COURT: Go right ahead.

THE WITNESS: I have said before that any standardized measure of this sort does not discriminate between the abilities of the youngster at all. It is a general measure -- it is not

a measure of his achievement in any given direction, or what his need is by way of direction, self-direction as well as direction by the teacher, his understanding of his own ability in a particular area with which we are dealing.

Q I understand --

A Whether it be in mathematics or in what have you.

The general tests don't give you that.

Q I understand that, Doctor, but suppose now you are a teacher in the District of Columbia Public School System and you are teaching the elementary grade class and you have some reservations about a student who is in your class who does not seem to be functioning properly -- he has not shown that he is getting the educational process which you are trying to infuse into him.

Now, along comes the sixth grade standardized achievement test, they are given to this child as well as every other child in his class -- every other child in the comparable classes in the school and in the system and in the country.

The results comes back and you find out what may confirm your suspicions that he does not seem to be achieving at the same rate as the others in his class.

Now, so far would that be a fair possibility?

A Well, that could be.

Q At least the test range would be lower than, we will say, others in the same class.

Would this not be a barometer or a red light, or possibly a warning to you as being a factor that you had better consider in determining whether this child really belongs in this curriculum?

A Yes, I think that it is a factor that should be considered. I think that, however, in considering it it is not a question of finality.

Q I agree.

A There is too much possibility that he has not been challenged up to this point.

Q What you are saying then, is, Doctor, that if I understand you, that to take the standardized achievement tests and consider no other factors but to say: "Johnny, you are in the lower one-third quartile," and whatever we want to call it -- so it is the basic track for him -- that would be improper?

A Definitely.

Q All right. But as a factor in evaluation, a barometer, as I have indicated, you certainly would have no objection to the use of such a test?

A No.

Q Now, do you believe, or what is your opinion, Doctor, with respect to the individual testing being used as a factor of evaluating the child?

A Individual testing is not involved in the track system at all.

Q Well, could you explain to me any further why you don't believe it is involved in the track system?

A Well, it is just impossible to give the kind of individual testing that one would use for the classification of pupils where there is need to classify them as abnormal in one direction or another, or determine whether they are or are not, simply for the purpose of use in the track system as a classification of this kind.

Q Let me ask you this: Do you know as a member of the Board or from your own knowledge whether individual tests are given to pupils as a factor in evaluation of the child before programming him?

A No, I don't.

Q Is it your testimony that you don't know, or that it is not being done?

A I don't know whether or not it is being done by my actual experience, but I feel this, that if cases come up that are recommended for individual testing, this would be done, because there is place for them other than in the regular stream of the normal child.

Q Would you think that the teacher's evaluation of the child's progress and conduct in the school would be a factor in evaluating the child?

A The teacher's progress should be a factor in evaluating the child. It is undoubtedly a factor in normal teaching procedures.

Q Well, do you know whether in the District of Columbia the teacher's evaluation is considered to be a factor in evaluating a child?

A Now, -- yes, it is, and in the, in handling the class, whether it be of one group, general or honors or basic, it is very important, is the teacher's evaluation of the child.

Q Do you believe, Dr. Haynes, that interviewing the child and discussing the problems that he is having, either at home or in the school, would be a factor in attempting to evaluate the child for curriculum programming?

A I believe that this is a very important factor for the teacher to use at any point, of course -- as we are progressing it seems that I would build a series of conditions under which it would be, the child would be evaluated for a particular curriculum, which, of course, I don't believe in.

Q Well, assuming my original premise that the purpose is to evaluate him for a curriculum, certainly these are factors in the determination --

A Well, this is classifying for a curriculum, or that is for the purpose of classification. I believe it is very much needed for the evaluation of the child with whom you are in contact and dealing, this is very necessary, but if this is for the purpose of classification and not for the purpose of evaluation at the moment, there is a difference, I think.

Q All right, then. I will use your terminology, your phraseology and what I have set forth will relate to evaluating a child in terms of trying to gauge what areas



of interest he has and what his limitations might be, trying to channel him in the right direction, to broaden him as much as possible. Is that what in essence you are saying, Dr. Haynes?

A Yes, and may I ask this question: Do you mean, then, that what you are dealing with is what the teacher, wherever she is working, will be attempting to do and are the things she would use in attempting to direct this child into the direction she feels he should go?

Or, is this for a large classification where you have had no contact with the child and you are directing? If it is the second, I don't agree. If it is the first, I do.

Q Well, I will take the first for the purpose of discussion and I will take the second with the premise that I did not mean that the child does not receive any individualized evaluation.

Now, do you consider that the child's medical history would be a factor that one should consider in attempting to evaluate under your factual basis as well as mine, even though you disagree with it?

A Well, for evaluation of progress through the program,

or the contact of the teacher outside of the program as well as the general classification, I think that the medical knowledge is very important.

Q And how about parental consultation?

A Parental consultation is most important for evaluation of progress.

In fact, it is essential for evaluation of progress in the curriculum.

Q To sit down and talk with the parents of the child?

A Yes, sir.

Q And indicating what his progress is, and so forth?

A That's right.

Q What about evaluation by a professional psychologist for whatever individual testing that he in his professional judgment might deem necessary?

A Well, all -- well, such techniques are very useful wherever needed.

Q So if it is determined, or believed by somebody, that the services of a professional clinical psychologist are necessary, then this would certainly be a factor that one would want to consider in evaluating that child for your purposes or for mine?

A Yes.

Q Dr. Haynes, do you know what the prerequisites are in the District of Columbia School System before a child can be programmed in the basic curriculum?

A Yes, we have that information.

Q Would you tell us what that is, please?

A Would you delimit your question?

Q Well, what determinations have to be made or are made by the School Administrative Staff before a child is programmed in the basic curricula?

A Well, of course, this is the document: "How We Are Meeting Individual Differences," published by the District of Columbia Public School System and we have that situation that -- we have this statement: "Placement in this curriculum (that is the senior high school basic program) is based upon the student's intelligence and class performance. Generally, students in the basic track in senior high school were in basic track in junior high school."

Now, moving from the elementary to the junior high school --

Q Just a minute, Doctor. Is that a standard publication?

A This is a publication of the Superintendent.

MR. REDMON: May we have this marked as Defendant's Exhibit, Madam Clerk?

(Whereupon, the document referred to was marked for identification as Defendant's Exhibit No. 9.)

THE WITNESS: I have this document.

MR. REDMON: Just a minute, Doctor.

BY MR. REDMON:

Q Would you please generally define for us what has been marked for identification as Defendant's Exhibit No. 9 and I will mark this as Defendant's Exhibit No. 10 -- would you identify it in some form for the record, please?

(Whereupon, Defendant's Exhibit No. 10 was marked for identification.)

BY MR. REDMON:

Q Would define what is Defendant's Exhibit 9, Doctor?

A Pardon me?

Q Would you tell us what Defendant's No. 9 is, please?

A This is a document published by the public school system in D. C. and it is titled: "How We Are Meeting

Individual Differences in the D. C. Public Schools" --

"Philosophy, goals, and then programming -- conditions under which one enters senior, regular, general or basic or honors."

Q Just a moment, Doctor. Does that carry a date of publication, Doctor?

A I judge it does. I do not see a date of publication.

Q No, I don't either, as a matter of fact, but it has been identified.

Doctor, would you tell us what the language is in that particular document relating to the programming of the child in the basic curriculum?

A Well, this is -- elementary school?

Q No, all I want is what determinations go into programming a child for the basic curricula or anything else of that kind -- is there anything in there that sets up standards, or what evaluation is made?

A Flexibility of curriculum -- "Placement in the honors curriculum depends on the student's demonstration of academic accomplishment, scoring on standard tests, recommendation of the classroom teachers and principal and the student and parents desire to participate in it."

curriculum?

A I am vitally concerned.

Q So that if a principal called you up and said: "These children don't have the books to use," wouldn't you pick up the phone to Dr. Hansen, or write him a letter and tell him that?

A May I say that my real concern, my concern really that is relative to the basic track has been not how it is operated and that is the line of your questioning, but it definitely is the philosophy underlying it and therefore I'd have much more to offer in that direction than in terms of how it is working in a particular class.

I am sorry, but that is why I am so inadequate.

Q Dr. Haynes, for the record, are you saying that you don't know how the track system operates?

A I am not saying I don't know how the track system operates, but I am not an authority on how the track system operates. I don't have the details in every case.

Q You have been tendered as an expert to this Court and now you are saying that you don't have the authority to testify concerning the track system, is that correct?

A No, I am not saying that, and I don't see how that could be interpreted that way.

MR. KUNSTLER: Your Honor --

THE COURT: I think the witness is taking care of herself.

MR. KUNSTLER: I think so, too, Your Honor.

BY MR. REDMON:

Q Dr. Haynes, what subjects are taught in the basic elementary curricula in the District School System?

A The regular course at the elementary school had a reduced, a very much lower level.

Q All right. Now, would you tell us about it, please?

A Where this teaching is going on.

Q Will you tell us what those courses are specifically?

A The regular course in the elementary school?

Q Yes. I don't know what the regular course of the elementary school is.

A You don't? Well, you do not, you don't think of the elementary school in terms of courses and that is why I am at a loss in terms of your question, but you have language, you have mathematics, arithmetic, and you have reading. I

system does not have a first grade book.

Q Dr. Haynes, are you saying that a child in the first grade, for example, would not have a book to be used in a particular subject matter field?

A Yes.

Q And how long have you known this?

A Pardon me?

Q You say you have known this to be the case?

A Yes.

Q But you have not reported it?

A I have reported this.

Q You have reported it?

A I have talked about it again and again.

Q Have you talked to Dr. Hansen about it?

A I have talked to the Board about it with Dr. Hansen present.

Q And would you please tell us when, if you can recall, you made such a statement to the Board?

A No, I can't.

Q And the second grade, again, Dr. Haynes, in the basic curriculum, what subject matter is taught to the



children in terms of classification?

A I am not prepared to discuss curriculum at length. I have it at my disposal, but I am not prepared to go into it at this time. I do have it where I need it and when I need it, but I am not prepared to discuss it. It is not my area and I am sorry that I am unable to give you that information and to be sure that it is accurate, but I do have it for the purpose of study and utilize it for that purpose, but I am not prepared to answer that.

Q Dr. Haynes, going back to what we were first discussing before we went to the curricula, and that is the child's election of subject matter which would be outside of his normal basic curricula, do you know of your own knowledge, or from any documentation, whether the child in the first six grades can take a course which is outside of his normal basic curricula. That is to say, let me be more specific --

A Yes.

Q Let us take a course in the general curricula and a child in the basic curricula. Somewhere during the first six grades may he say: "I don't want this arithmetic course

papers). We do have a general statement as to what the basic curricula is in the senior high school which I happen to have with me --

Q Dr. Haynes, we will get to the senior high schools in a moment, if you please.

A Well, if I happen to have the one with me that I have been working on on the junior high school I can answer this very accurately, but I cannot keep all of these things in my mind when I have so many areas to cover on the Board. There is not just one area and, as I said before, I have access to this material and I work with it all the time, but I am not prepared to make these fine distinctions because I can't keep them in my mind.

Q Dr. Haynes, I don't mean to be difficult, but you have been set up here this morning as a critic of the track system.

A Yes.

Q And an expert critic in the track system.

Now, I think we have the right to elicit from you whatever information you have concerning the curricula.

Now, what subject matter, to your knowledge, is offered to the student in the junior high school basic

curricula?

A (Pause.) Well, there is foreign language to an extent, English, mathematics, science, history, business practice, shop, home economics.

Q Well, to take the foreign language, Dr. Haynes, if we could for a moment, and the mathematics --

A Now, this is the total curricula in the junior high school that I have given.

Q And I am referring to the basic curricula and I ask you if you know what is involved in the basic curricula?

A Well, there is foreign language in the basic curricula, there is no -- there is English in the basic curricula, there is mathematics which is different from the mathematics in the other areas; there is science which is different and which is registered as basic science.

Then we have shops and business practices -- I think I said shop.

I think that about covers it.

~~Q~~ Dr. Haynes, if a child in the basic curriculum in the junior high school wishes to substitute, say, a basic mathematics course that he has in the curricula, is it

A It does depend on the kind of teacher you have in the classroom. That is the most important part, I think, of all teaching, but if you have classified him so that he has no contact, no opportunity to work with this type of teacher, he realizes very soon that he is one of the cannots, that he is not one of the cans -- one who can.

Q Doctor, have you ever indicated publicly that belief?

A Pardon me?

Q Have you ever indicated publicly that you believe in pupil-ability grouping?

A No.

MR. REDMON: If Your Honor please, may we have our lunch hour recess at this point. I may be some time yet with this witness.

THE COURT: We will recess until 2:15.

(Whereupon, at 1:05 the hearing was recessed until 2:15 of the same day.)

## DIRECT EXAMINATION

BY MR. ANKER:

Q Would you state your name please, for the record?

A Elias Blake, Jr.

Q What is your present employer, Dr. Blake?

A I work for Educational Projects, Incorporated, a private consultant group to the Office of Economic Authority.

Q Could you state briefly the nature of your employment?

A Well, I have a geographical responsibility. I in the southeastern United States, helping schools and colleges set up precollege programs for disadvantaged high school youngsters.

Q These programs are year-round programs or temporary programs or what?

A They are year-round programs in the sense that the students come to the college campuses for 6, 8 or 10 weeks in the summer and then come back on Saturdays during the academic year, and if they -- say 10th and 11th graders, which is the primary group-- they come back after their junior year and after their senior year hopefully to get to college.

Q And the organization which employs you is a non-profit corporation, is that correct?

A Yes.

I am familiar, I am positively positive I am familiar with the tests which was being used if you give me the names of them, and that period doesn't extend over that long a period of time, of the tests. It is the specific name that I am trying to remember and I don't remember.

MR. REDMON: If Your Honor please, I have no further questions of this witness. However, I do oppose his being proffered as an expert in tests and measures within the District of Columbia School System. He may be an expert in the field, but he certainly is not with respect to the District of Columbia Public School System.

THE COURT: Well, the Court will accept him as an expert in his field of educational psychology and we will proceed from there.

MR. ANKER: Thank you, Your Honor.

DIRECT EXAMINATION (Continued)

BY MR. ANKER:

Q I show you Exhibit B-10 which I understand is a listing of the tests which are ordinarily given in the District of Columbia School System and which varies with grade levels and I ask you whether you are familiar with any or all of the tests

professional opinion?

A Well, these tests, and the groups that are very generally standardized, do not, specifically do not include in many instances low income negroes.

MR. CASHMAN: Objection, Your Honor, and I would like to move that that answer be stricken. The question was posed with respect to the tests that are given here in the District of Columbia.

Now, we are getting an answer that says in many instances they are designed for a certain group and it is neither responsive, nor is it correlative to the question that was directed prior to that.

THE COURT: Well, directing your answer specifically to the tests that are shown on that list which, I believe, is B-10, could you answer the question?

THE WITNESS: Yes, with reference to the tests on that list, yes, I would say that the tests on this list, the groups on which these tests are generally standardized, do not include a representative group of low income negroes, that the tests are generally standardized over predominantly white groups, groups which contain middle income groups.

BY MR. ANKER:

Q Well, perhaps if I ask you what you mean when you refer to the group over which the test is standardized that would clarify it.

A Well, when you define standardized tests, what essentially you do is take what you refer to and you make a test, assuming you know what question you wanted answered, and what you want done, and then you take this test as you have made it, and you give it to a very large number of people.

Well, now, this is called a pre-test group and you look at the results from that group and you see how this test works.

If the people can answer the questions, or whether the items are ambiguous, and so on and so forth -- this kind of thing you look at, and then the second step would be to take the revised instrument which you have and which you think is good enough to be given to large numbers of people and you would, say, you would take the elementary schools, and you would try to make these schools cover the information and give the tests to the individual students.

The results which then come in on the test give you



an average or a range of scores.

Then, it becomes what is called the norm, or a standard, the performance of the group which covers a large group of individuals. This is what I mean.

Q Let us say, to put this in terms of a concrete example, Doctor, some of those tests that are on that exhibit, scored on the basis of 100 being the norm and then you have below 100 and above 100 -- below being below the norm, and above 100 being above the norm?

MR. CASHMAN: Now, Your Honor, I object to this question, "Are some of these tests scored at a hundred, or below or above."

I think if we are getting into a criticism of these tests and discussing the matter of these tests, it ought to be at least fairly pointed out as to which of the tests counsel is referring to.

THE COURT: He is referring to all of them.

MR. CASHMAN: No, he said some of them.

MR. ANKER: At this point I am just trying to make clear for the record as to what is a standardized test and how the standard is established, Your Honor.

THE COURT: I think counsel is right. You did say "some" and I think you ought to take all in.

BY MR. ANKER:

Q Well, is this correct, Dr. Blake, would you describe the kind of score result which comes from these tests?

A Well, I can make a general statement about the kind of results that you would get out of these tests.

Q What I want to know is how is the result expressed?

A Yes, that is what I was going to do, that is what I am getting to.

Q All right, Doctor.

A Well, one kind of result which you would get is the result by grade level. That is, the child's score is expressed in terms, of say, grade 2.0, or grade 2.5.

The other kind of score which you get is expressed in a percentile and this score indicates what percentile, what people were above or below that particular point and these percentiles shown go from zero to 100 -- a person would have a percentile of 32, 62 and so on, whatever.

This is the general way in which these scores are expressed.

Q All right, now. Taking a test which produced a grade equivalent score, am I correct that the basis for that grade equivalent is the group to which the test was originally administered for the purpose of establishing the standard?

A Yes, this is the standard.

Q And what is the proper way of referring to that group?

A It is called the standardized group.

Q The standardized group?

A Yes.

Q So, in other words, if a child gets a grade equivalent score of say three, it indicates that his test result was equivalent of the average third grader in that standardized group, is that correct?

A Right -- that is exactly correct.

Q And in your early testimony you said --

MR. CASEMAN: Now, Your Honor, I object to counsel summarizing or redefining or telling us what the witness' testimony is. That is for the Court to determine.

THE COURT: Would you rephrase your question.

BY MR. ANKER:

I am rephrasing it, Your Honor. Is it the fact that

these tests in the exhibit which is before you are standardized on the basis of a white middle class group, or white middle class groups? Q3

A Well, I would have to say that the standardization groups are not 100 per cent white. I cannot make a statement of that kind. The group, however, is predominantly white. A3  
There are generally very few negro subjects in the standardized samples of most tests of this sort.

The problem is, then, that when you have say a group of low income negro youngsters taking this kind of test, the test is asking them to compare themselves to, in their developed ability to deal with these tests, to a much more highly developed group and in this sense one cannot reasonably expect this group, which has not has its abilities developed as well, to perform up to the same standard as far as white middle income groups which have much better developed abilities.

Q Well, I wonder if you could be a little bit more specific as to what you mean by more highly developed, or lesser developed as between these two kinds of groups, Doctor?

A Well, as I say, as I was saying before, if you take an illustration -- let us take the sequential tests, educational

A3

THE COURT: No, the question before was whether the quality of the teaching at the school affected the test scores.

MR. ANKER: The quality of the teaching?

THE COURT: Yes, similar middle and upper middle class groups -- that was the question before and the witness answered the quality of the teacher would affect the scores, even if you were dealing with similar groups, is that your testimony?

THE WITNESS: Yes.

THE COURT: Right.

MR. ANKER: All right.

BY MR. ANKER:

Q Your previous answer was specifically relating to the quality of teaching in the schools, is that correct?

A Well, I think the question was quality of education, but it includes the quality of the teachers.

THE COURT: Well, suppose you find out what it includes other than teaching.

THE WITNESS: Well, the quality of education, the teacher would be the prime ingredient, in the training,

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*Compensatory  
Education*

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qualification and background of the teachers to teach the youngsters which they are teaching.

The other ingredient would be the necessary materials to work with which would mean books, charts, graphs, maps and so on in abundant and differential enough quality to deal with the different kinds of situations the person might run into.

In addition to this, the quality of the education would also include a kind of positive environment within the school, meaning that people in that school expect the students to learn and therefore put all their efforts into making certain that the students live up to these expectations.

These would be the fundamental aspects of the quality of education.

I think that in addition to that there would be enough different kinds of, say, people in that school so that the child could have his contacts and relationships with these kind of people as component parts of his education.

By that I mean I think that it would be very difficult, for example, to have what would be called quality education in a school where everyone is poor and to add to

that is negro.

I think that all of these people, having the same problems, would find it difficult, you see, to have their education proceed at the same level as if they had other kinds of people with, say, more education, more economic background, in the same school with them.

I think this would also have to be a component of quality of education.

BY MR. ANKER:

Q Right, and the extent to which these various components of quality education do not exist in a particular child's background, that will affect his performance on the test?

A It would affect, yes, it would affect his performance on these tests.

Q Before you?

A The tests before me.

Q Now, let me ask you this question, Doctor: If there were some fair instrument or other technique for determining the ability to learn, would the distribution of high learners, average learners and slow learners be approximately the same

*What schools were in the area?*  
*What level?*

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THE WITNESS: It attempted to determine whether or not there was a relationship between the education and income level in the census tract surrounding the school and what percentage of students in those schools were in the various track in the school system.

THE COURT: And what did you do in connection with the attempt?

THE WITNESS: Would you phrase that differently?

THE COURT: What did you do -- what figures did you get and where did you go, and so on?

THE WITNESS: Well, I got figures on the track placements from the Research Department of the Public School System.

Of course, I used a map of the public schools, identifying the census tracts within each school area, locating them, and then of course I compared the two -- this is the income and the education, you see, of the school, with how many schools were in the various areas, and the buildings.

THE COURT: What did you find? *Q*

THE WITNESS: I found that there was a relationship between the education and income level of the schools and the proportion of students in the tracks. *A*



I found there were more students in the lower tracks from the lower income areas and there were fewer students in the higher tracks from the lower income areas and vice versa, it was true that schools which had a higher income level, there was a smaller number of students in the lower tracks. *As*

There was a larger number of students in the upper two tracks and a smaller number of students in the lower two tracks which would seem to indicate that there is a relationship between income levels and the track in the school system, there was a relationship between the higher track and this is right through to senior high school.

MR. CASHMAN: Now, Your Honor, with respect to this document, I would ask that the Court reserve its ruling until I have had an opportunity for cross-examination of the witness with respect to it?

It contains hearsay and much that I would like to examine further so that I would ask Your Honor to withhold ruling with respect to its admissibility.

At the same time I would object to the last question and the last answer which were so importantly relevant to this particular study.

would say it has to be compared to the table which indicates how many students are in what tracks, where in the school system. For example, when one looks at these three schools which are heavily negro one sees that --

Q Would you wait just a minute, Dr. Blake. Just to clarify the record, I think the table you are speaking of is B-15?

A Well, I will try to summarize.

Q Well, is this the table that you are referring to? Q

A Yes.

Q B-15?

A Yes. I will try to summarize the relationship between these two.

It appears that in schools where there are very large numbers of negro students, larger numbers of those students are in the general and lower tracks.

On the other hand, when you look at what happens to the people in the general and lower tracks as opposed to the upper tracks, you see in terms of college, as one kind of criteria of opportunity, you see a much smaller group of students that go on to college as compared to others. A

I am trying to show that when people are in certain tracks it appears that, from the follow-up statistics on these groups, that they do not show an equal amount of movement, an equal kind of movement, into the world and I don't really see why in schools which are heavily negro that you also have a heavily predominant number of students in these lower tracks which, in turn, do not go to college at the same rate as the students in the upper school systems in the District of Columbia.

I think taking these two tables as a unit, this is what they show.

Q In other words, to put it very briefly, the two tables --

MR. CASHMAN: Your Honor, I would object to counsel testifying as to the expert witnesses testimony. There is no need for counsel to put it in other words, or to reiterate his testimony.

THE COURT: I will overrule the objection.

MR. ANKER: May I clarify it?

THE COURT: You may clarify it if you can.

BY MR. ANKER:

Q If this is a wrong statement of what you are saying,

A Yes, it is.

Q And you disagree with the track system because you believe in the heterogeneous approach?

A That's right.

Q Now, apparently you have some documentation there with respect to educators who believe in heterogeneous grouping.

Would you give the names of some of them?

A Well, I have, from the Office of Education, this document that it does make a difference in pupil learning and from the conclusions I find this statement: "Children supposedly grouped according to ability seem no more likely to make greater achievement, greater achievement gains, than their counterparts in heterogeneously grouped classes."

Q Doctor, who wrote that report?

A Well --

Q May I see it, please?

A I don't have the report. I have the quotation from it.

THE COURT: What is the name of the person who wrote it?

A I don't -- I can't answer the question.

Q Do you know of any large metropolitan public school system that uses some form of pupil ability grouping?

A I cannot speak for the entire school system. I have here, from Dr. Dan Dodson, stating, and this you will find in the Washington Post of April 16, 1965, that the theory of separating children into homogenous ability groups was the antithesis of education.

Q Who is Dr. Dan Dodson?

A Dr. Dan Dodson is a highly respected professor of education.

Q Where?

A Well, that may be obtained. I can't recall at the moment.

Q Well, does he reside in the city?

A No.

MR. KUNSTLER: I may inform counsel that he is at New York University.

THE WITNESS: New York, that's right.

BY MR. REDMON:

Q Did you read the Task Force report, so-called

Pucinski report, Doctor?

A Yes.

Q Then, you are probably aware that all the elementary schools of Los Angeles, San Francisco, San Diego, <sup>DATE?</sup> Daydo County Florida, the State of Hawaii, New Orleans, Louisiana, Baltimore, Maryland, Detroit, Michigan, St. Louis, Missouri, Buffalo, New York, New York, New York, Cleveland, Ohio, Cincinnati, Ohio, Philadelphia, Pennsylvania, Pittsburgh, Pennsylvania, Houston, Texas, San Antonio, Texas, Seattle, Washington, Milwaukee, Wisconsin, all use some form of ability grouping?

MR. KUNSTLER: Your Honor, at this time I would like to raise objection. Counsel is apparently reading from the Pucinski report. We have no objection if he is referring to a paper, one, to put it into evidence, but there is a lot of other information in there, there is a whole variety of ways of ability grouping and all sorts of explanations that go into it and I think if he is going to question the witness on it and refer to it, that it ought to be offered into evidence.

MR. REDMON: Well, I am just asking the witness, Your Honor, whether she had read the report and she said she

THE COURT: Well, she can say she doesn't know as I believe she did say, so let us proceed.

BY MR. REDMON:

Q In the cross-tracking, or in the moving up from one track to another, have you acquainted yourself with any figures relating to the number of children who move from the general to the honors or from the general to the college curricula?

A I thought the Superintendent covered that in his discussion. I am not familiar with these detailed figures.

Q Dr. Haynes, you have indicated that there is no such movement and I would like to ask you whether you have prepared yourself by examining such figures as to the amount, if any?

A My statement is based upon this very fundamental fact that you don't, if you don't have algebra you can't take trigonometry.-- I don't care who wants to move you or how willing you are to move, or how interested you are in moving.

It isn't necessary to try to get the number of people who have been moved because they were originally misplaced to define the number that have been moved up -- I

am not saying that you don't move up, but if they are misplaced you would hope that they would have a chance to move up.

However, if they have been confined in the track and don't have the preparation for moving, there is no possible way for them to move.

Q Dr. Haynes, are you speaking in generalities now?

A I think that is the logical conclusion.

Q I am asking you are you speaking in generalities?

A It is a general statement, yes.

Q All right. I would like to ask you now -- we have been talking for the last two hours this morning and almost an hour this afternoon about the curricula and testing and whatever investigation you have made and you have been answering in generalities --

THE COURT: Counsel, if you have a question to ask the witness, ask your question.

BY MR. REDMON:

Q With respect to the percentage of children who move on to college from the basic curricula, do you have any idea how many do that?



A I do not. I have seen some figures, but I do not know.

Q Well, would the figures eight per cent in the year 1964 sound right?

A I don't know. I don't know.

Q Do you know how many children have gone to college in the general curricula in 1964?

A I do not have those figures. I don't know how I can be expected to have them, so I am just saying that I don't have them.

Q Dr. Haynes, doesn't the administrative office pass all of these records along to the Board of Education -- these are all public records, aren't they?

A If you have any idea of how many records, how many records are passed along to us, then you would certainly know that it is impossible for us to retain all these figures and all this information in mind in order to tell you at a hearing like this. If you had asked me to bring this information, I'd be happy to bring it, but I couldn't possibly do my job and carry all this detail around.

Q Well, Doctor, in these particular proceedings today,

Dr. Haynes: Benning, Blair, Brent, Brightwood, Bunker Hill, Carver, Congress Heights, Eckington, Emery, Gage, Grant, Langston, Leno~~x~~ Annex, Lewis, Morgan, Nichols Avenue, Pierce, Parowell Annex, Randle Highlands, Sumner, Taylor, Walker Jones, West.

THE COURT: Does that complete the list?

MR. REDMON: Yes, Your Honor, and they are all predominantly negro schools having no basic curricula.

THE COURT: Well, we will assume that it is correct that the document will so show. It speaks for itself -- let's move along to something else.

BY MR. REDMON:

Q Dr. Haynes, in terms of the claim that you have indicated today that there is racial discrimination due to the track system and the fact that there are 24 elementary schools, predominantly negro in pupil population, which do not have a basic curricula, how can you support such an opinion?

A You are not talking only about elementary schools, you understand, and another thing, only a person who is in contact with the situations could answer a question of this type.

Q But, Doctor, you have --

A As a member of the Board of Education, I don't have that type of contact. I do receive material, but as I say the track system is not confined to the elementary schools and all you are talking about there is the elementary schools. You have to talk about it as compared to tracking in the junior and senior schools and then if you ask the same question or study the same materials you will find that in the junior high school and in the senior high school in the District of Columbia there is very, very different circumstances --there is a very different picture.

Q Dr. Haynes, I would like you to answer my question. I have indicated to you now that 24 schools in the District of Columbia -- just wait a minute, please -- which are predominantly negro schools have no special academic or basic curricula and I ask you whether this supports or does not support your contention that there is economic or racial discrimination among the negro schools?

A I don't think you can draw any conclusion --

MR. KUNSTLER: If Your Honor please, I am going to have to object to this. I think it is getting a little

argumentative and the record speaks for itself.

MR. REDMON: Well, she has made the statement --

THE COURT: The witness has answered the question. I was hopeful that we could move along.

BY MR. REDMON:

Q Dr. Haynes, in connection with the general track and the college preparatory or honors in a predominantly negro school, do you know of any discrimination that is taking place in such a school in terms of race or economic factors?

A Well, I think for instance Wilson School has no basic track.

Q Do you also know that there are negro schools that don't have any basic track?

A I know that Dunbar High School has no honors track.

Q But the other negro schools do?

A I don't have that information. I could give you that information if I had been asked, but I don't have it here.

Q So you don't know.--

A I can't recall, as I said to you a moment ago, I cannot carry that kind of data around in my mind.

Q In terms of grouping of children, whether negro or white, in general track in predominantly negro schools, Mr. Haynes, or in mixed schools, do you know of any instance where there is any effort to break the children apart by race?

A This is -- what do you mean by effort to break them apart?

Q Well, does the grouping make any effort to break them apart in the mixed negro and white school or in a predominantly negro school -- are they totally separated as a result of this curriculum in your opinion?

A I think this is very difficult to answer. It is most difficult to answer all these general questions because no set of statistics follows that kind of generalization.

I would say this, that my experience with the situation and my own contribution to the situation has been from the standpoint of the philosophy involved and not in terms of whether or not it works.

Q And so then --

A And from the standpoint of my involvement, it has not been to the extent to which it is operating here or there.

I have expressed myself very strongly about the

damage that is done emotionally to the children who are regarded as unfit and so on and this is very unfortunate. This is the situation we have here in the track system and there is information on this and I have information.

Q So that in terms of the operation of the track system in the District of Columbia, you don't claim to have such knowledge which would justify you in making such a conclusion as to its operation?

A No, absolutely, I am sorry, but that was not my answer. I am not able at this moment to produce it, but I do have it, I have it -- yes. I do know it is the situation in the District of Columbia and you are making it seem that I am saying I am not familiar with the situation. You don't have to go to the schools to count the children -- I do have it before me. I have reports from the unit, from the administration, indicating what is the picture and those reports I have used in developing my conclusions.

Q Dr. Haynes, I have one or two more questions and then we will let you go home.

Would you tell us the names of the educators or writers who have criticized the track system in the District of

of the District School System?

A No. May I say that it would be a very laborious task to try to check on every single one and how this is done. I am interested in the possibility of this and how the average person may cross from one to another, and what are the circumstances that make it impossible for one to cross from one to the other.

Q Doctor, would you say in determining the flexibility of the four-track system that the amount of cross-tracking that did go on would be at least one factor that would indicate whether or not the four-track system was or was not flexible?

A No, because a number of people drop out. After all, they disappear from the figures and they are no longer there. But they did not move up and they only moved out. They moved down.

Q Now, you understand that I am making reference to cross-tracking as it is either up or down?

A And what is your question again?

Q I want to know whether or not if we had some information on the amount of cross tracking that does go on within the four-track system that it would be a factor that would be able to help us to determine whether or not the system was rigid, inflexible or flexible. Would that be helpful, would you say?

A Well, if that was valid information; yes.

Q Now, do you have any information along those lines for us now?

A No, I have not.

Q When did you get your M.A. at the University of Chicago, Dr. Haynes?

A 1930.

Q Now, in connection with examination by counsel, you indicated that there came a point in time when there were a great many children in the basic curriculum who were untested. When was that, Doctor?

THE COURT: Do you mean individually untested?

MR. CASHMAN: I didn't know whether or not that was made specific, Your Honor. I was just trying to use the terminology as close as I thought it was given.

THE WITNESS: I would say in '62, '63 and '64.

BY MR. CASHMAN:

Q And were you able to determine how many children fell into that category?

A I am not able to give you a figure that I believe is definite, and I prefer not to give it. It is available and it is possible to find that out. I know that it did exist and it is a matter of record. It can be secured from the Department of Pull Appraisals.

Q All right. Now, Doctor, let me ask you this: Do I



understand that it is your further testimony that you never acquired the information or took pains to find out whether or not this situation was remedied with respect to these children?

MR. KUNSTLER: Your Honor, I object to the question because he has added into it "took pains to find out".

MR. CASHMAN: I will eliminate that from the question, Your Honor.

THE COURT: All right.

THE WITNESS: As I have said before, I am not the administrator. I raised the question. I offer the suggestion. I do not follow through to see that things are done. This is the job of the Superintendent or the Administration. And unless I am informed or when I raise questions on the board and ask for answers I expect to get them from the Administration, but it is not my province to walk in and ask what is going on. It is my business to handle the policies and not the way the Administration is carrying forward. And I find that so many of these questions seem to imply that I should be in and out of the building and in and out of the offices to find out whether this has been done that I suggested or to what extent it has been done. I feel that really that is not my province.

BY MR. CASHMAN:

Q Were you a member of the Board of Education at this time?

A Yes, I was a member of the Board of Education at this time and I raised those questions at the table to the board and asked for replies.

Q Did you find out whether or not the number of children that we are talking about were ever thereafter tested?

A Were they thereafter tested?

Q Yes.

A I have the records as they come to me, as I said before, but I have never had the answer as to what was done. I don't know whether the record shows it. If it does, I had it, otherwise I didn't.

Q Now, Doctor, I am not going to go in at great length about testing. Mr. Redmon did that on Friday. I just want to get a few fundamental facts on that. Can you tell me, if you know, what kinds of tests, specifically, are given? Now, I am talking about general survey tests, not individual tests. Can you tell me what general survey tests are given in the District of Columbia Public School System?

A I think I answered that before. I do not know what is being used.

Q Would it be fair to say then that you would not know whether such tests would be so-called verbal tests, or non-verbal or, in whole or in part, verbal and non-verbal?

A I do not feel that is in my province to know and I am

not ready to answer that question.

Q I see. Dr. Haynes, would it be a fair statement -- and if you don't know indicate that you don't know -- to say that test results without interpretation and evaluation are themselves not indicative of a child's educational skill?

A Test results without interpretation and evaluation are what?

Q Are not of themselves indicative of a child's educational skill?

A Of what value would it be without evaluation or interpretation? I don't understand.

Q Maybe if I put the question in another way. That test results of themselves are of little value in indicating a child's educational skill unless there is also factored into that evaluation other elements? That is, where the child came from what the background of the child may be, class performance and other such factors. Would that be a fair statement?

A That would determine what you would want to do with your test results.

Q I see. Can you tell me this then? In the District of Columbia in the placement of children within the different curriculum sequences, is the raw test result the factor that is determinative of where that child will go?

A It is one of the factors that is determinative of where the child will go, as I understand. To what extent it is used I really couldn't say. I think I am quite sure from the reports that I have had it varies with the location of the individual.

Q I see. Now, can you tell us then what other factors would be generally considered when a child was placed in a track?

A Opinion of the principal and opinion of the past principal.

Q Anything else?

A I don't recall anything else.

Q Would you know whether or not in some cases individual testing goes on?

A I think individual testing does go on but I think that there is a very limited amount of individual testing, as one would expect.

Q Do you have for us at all any factual information on how much individual testing --

A No. As I said before, I do not have that kind of information. It is available but it is not worthwhile for me to try to get it. It is funneled out to me but I don't recall it offhand.

MR. CASHMAN: I have no further questions, Your Honor.

MR. KUNSTLER: Yes. Mr. Mood.

MR. CASHMAN: Before we do that, Your Honor, the defendants have a motion that the last witness who testified and who was offered as an expert, her testimony with regard to any expert opinion be stricken on the grounds that after a searching examination by Mr. Redmon and reiteration of the facts today, it becomes apparent that the witness is not an expert in the track system.

Further, Your Honor, we would move to strike not only her character as an expert witness but her entire testimony for this reason, that lacking expert status her entire testimony has been opinion and conclusions and has been in the most vague and general terms.

Your Honor, in support of our position, I would like to invite the Court's attention to page 1060 where I am quoting from the top of the page, and I would like to read as follows:

[Reading]

"Q So that if a principal called you up and said, these children don't have the books to use, wouldn't you pick up the phone to Dr. Hansen or write him a letter and tell him that?

"A May I say that my real concern, my concern really that is relative to the basic track, has been not how it is operated, and that is the line of your questioning, but it

definitely is the philosophy underlying it and, therefore, I have much more to offer in that direction than in terms of how it is working in a particular class. I am sorry but that is why I am so inadequate.

"Q Dr. Haynes, for the record, are you saying that you don't know how the track system operates?

"A I am not saying I don't know how the track system operates but I am not an authority on how the track system operates. I don't have the details in every case."

I think, Your Honor, in light of her testimony, in light of the fact that the so-called expert opinions that she held are, frankly, not supported by statistical or other factual information; and in view of this admission on page 1060 of the proceedings, that she is not an authority on how the track system operates, I think the defendants are entitled to their motion to strike her testimony and her expert character as a witness."

THE COURT: That motion is denied. It should be noted that the witness was called as an adverse witness as well as an expert. Now, her question of expertise will bear on the weight to be given her testimony. But the former is also important, the fact that she was called as a defendant in this case. And also, I think it should not be overlooked that she is the President of the Board of Education. We will take a 5-minute recess. [Recess at 11:25 a. m.]

MR. KUNSTLER: Your Honor, our next witness is Dr. Cline.

Whereupon,

MARVIN G. CLINE

called as a witness by the Plaintiffs, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KUNSTLER:

Q Please take the stand.

MR. CASHMAN: Your Honor, with respect to what has been offered as Plaintiff's (A-19) which is a report of a speech given by Mr. Harold Howe, who is the U. S. Commissioner of Education, defendants object to it, Your Honor, on the grounds that it is hearsay.

THE COURT: Do you have anything further you'd like to offer with reference to this Congressional Record offer?

MR. KUNSTLER: No, Your Honor, except it was always my understanding that Congressional Record portions were always admissible in evidence and we offer it as a public record to be admitted into this case.

THE COURT: The Court will reserve ruling on that as well and with reference to all documents that have been offered in evidence, even though those documents are eventually excluded the Court will order that those documents be accepted

by the Clerk and marked "excluded" so that they will be available for further review.

I trust that I have made myself clear. The fact that a document has been offered and has been excluded does not mean that it is not part of the record in this case. It will remain part of the record but it will be shown as "excluded" from consideration in the determination of the case.

All right.

BY MR. KUNTLER:

Q Dr. Cline, will you state your full name for the record?

A Marvin G. Cline.

Q Will you state your occupation?

A I am a research psychologist at Howard University. *AK*

Q And how long have you been such?

A I have been at Howard University since September 1964.

Q Now, Dr. Cline, what is your special field of endeavor at Howard University?

A I am an experimental social psychologist. *AK*

Q Are there any particular areas in which you have specialized in that capacity?



A In the past two years at Howard University, I have spent most of my time on studying the characteristics of low-income children in a variety of settings but particularly in the school setting.

*what other settings?*

Q And in that connection, have you spent some of your time or a considerable portion of your time with reference to studying the Washington, D. C., school system?

A Except for one study, which was completed in 1965, all of my work has been on children who are, who were at the time of the study enrolled in Washington, D. C. Schools.

Q Now, Dr. Cline, where did you receive your first degree, your Bachelor's Degree?

A From Dartmouth College.

Q What year?

A In 1948.

Q And can you indicate to the Court what your major was?

A Psychology.

Q Now, you then proceeded to obtain a Masters Degree, is that correct?

A That is right.

Q And where was that?

use of their time.

Q Would this be related at all in any way to the intellectual skill that might be possessed by these medical students? Would that be a factor at all?

A Whether it was related to how much intelligence they had?

Q Yes.

A The correlation, that is the degree of relationship were moderate in this case, not particularly high.

Q But that was an area of measurement you took in connection with other areas that you just described?

A Definitely.

Q Would it be fair to say, Dr. Cline, that in the evaluation of anybody's educational skill that an examination that concerned itself with the individual's intellectual ability would be a helpful factor in whatever classification might result?

NB

A At one time in the history of education and educational testing it was considered to be very critical. I think currently the value of this kind of information is considerably less than we had thought of before.

Q I see.

Would you indicate whether or not despite the

fact that its importance has become under the modern view less, would it still be a helpful factor in determining the educational skill of a person?

A Under certain circumstances, if there were appropriate instruments to assess these skills and characteristics of the students it might be helpful.

Q Doctor, you indicate that the reliance that is placed upon such measuring tests is less than it was in the past. Can you tell me when, Doctor, this degree of importance that it presently has now came into vogue in the educational testing measurement field?

MR. KUNSTLER: Your Honor, I would like to object.

I don't think this is proper cross examination of qualifications of an expert. I think it is getting into the main case.

THE COURT: Are you still testing his qualifications?

MR. CASHMAN: Yes, very much so.

THE COURT: Doctor, can you answer that question?

THE WITNESS: I could give an opinion.

THE COURT: All right.

THE WITNESS: I, my feeling is that in approximately 1892 when Alfred Binet was first reporting on the construction of intelligence tests he warned very severely to the people

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that they too cannot be used reliably to predict how a child will perform in the future.

These particular children; they are much better in predicting how middle class children for example will do, although they are not the most --- They are the best single predictors but they are not perfect predictors by any means.

Q Are you referring to individual tests now?

A Yes, individual intelligence tests.

Q Dr. Cline, then what do we have upon which we can rely as being the best indication of how a child is going to do tomorrow as you put it or how he is going to achieve intellectually? What if a group achievement test is a very small and inauspicious test and if the individual test is helpful but not controlling what do educators have upon which they can rely that would point them in the direction of the achievement of the pupil in the future?

A Yes, I would say they have none, that the only choice open to them is to make as wide an educational fare as possible available to these children.

Q Fare?

A Fare. So that they could be able to indicate their own speed and their own level. That is to use any measure at this point to estimate their rate of potential development is likely to be significantly in error and to be therefore very,

Q Doctor, in connection with your own academic experience, can you tell me what courses you took in education in the acquisition of your Batchelor of Arts Degree at Dartmouth?

A I have never had a course in education.

Q Does this apply as equally to the acquisition of your Masters Degree?

A That is right. I have never had a course in education.

Q And your doctorate degree?

A That is right.

MR. CASHMAN: The defendants concede that the doctor is an expert in the broad field of social psychology. However, the defendants object with respect to him being proffered as an expert in that field as it affects testing teachers in the District of Columbia Public School System. I believe he has been offered by plaintiffs as an expert in those areas and as I say beneath the concession, beneath our concession that he is an expert in the broad field we do not believe that the credentials that have been offered here today justify his being designated an expert in the fields he has been so proffered.

THE COURT: The Court will admit and accept the witness as an expert in the field of social psychology particularly in the subdivision of testing. Now, we will take it from there as the examination of the witness develops. That is your field, isn't it, just as I have said?

THE WITNESS: Yes.

THE COURT: All right. Take the witness.

MR. KUNSTLER: What is your pleasure with reference to the hour?

THE COURT: Well, it is getting to one o'clock. Step up to the bench.

(AT THE BENCH:)

THE COURT: I indicated that I would convene you on this meeting or whatever this is that you have. What time is it?

MR. KUNSTLER: Senator Morse is holding his press conference with this group at 2:30 in the Old Senate Office building. It is supposed to go just an hour. I would ask to be put on as fast as possible. Your Honor might consider going over the afternoon. I don't know what your feeling is in that respect.

THE COURT: Well, I'd like to go on with this witness

Q Now, Dr. Cline, taking a look at the tests which you find on B-10, which are given and administered in the Washington, D.C. school system, group aptitude and achievement, do you know from your study of those how they are standardized, what group or class of the population of children, I imagine, in connection with those tests are used as the standardization factor?

A You mean population on whom they were standardized?

Q That is correct.

A So far as I know there are no standard tests, certainly none that are listed here that have been standardized on anything other than what we usually refer to as a White NE middle class population. Now, the Stanford Binet test which is not on this list, which is an individual intelligence test is now in the process of being restandardized on a Negro in 1961 elementary and secondary population on the east coast of the United States. That is the only instrument that I am familiar with that has any population other than a White middle class population.

Q Lets assume, Doctor, for the sake of a hypothetical, that one of these tests --standardized as you indicate-- is given to a classroom for example, composed of White middle class

Q I'll break them down in a moment. I want to ask you this question before leaving the hypothetical which I gave you: in your experience, should the variations that might occur from class to class of White middle class children as tests given around the country --far west, east, etc.,-- would the variations be startling from group to group? Would you find substantial variations as or slight?

A In populations similar to the norm?

Q That is right.

A No. Ordinarily they are the same. Usually when you find sharp deviations of scores in populations that are similar to the standardization population, one immediately looks to the nature of the curriculum and characteristics of the teacher, that is, as soon as you get deviant scores, one begins to consider the test: <sup>is</sup> /no longer measuring the child or children, but rather the school and teacher.

Q I see. Now, Doctor, take another hypothetical, the tests being administered not to the comparative White middle class group that we have spoken about, but now it is being administered, for example, a ghetto Negro class instead of a middle class White class. In your opinion, would it get to children, approach the norm standard that we mentioned in connection with the White middle class standardization group?



A On the whole, no. We would expect, and for a number of reasons we would expect the distribution of scores in a non-normative population, particularly a lower income or ghetto population as you describe, we would expect would not perform in the same way and there are a number of reasons for that.

Q Would you care to give your reasons?

A Yes. One of the reasons implied in what I mentioned before is that the content of the test may be so constructed as to eliminate a possibility that the child will be measured on terms or items or ideas that are familiar to the child. This is the classical critique of standard tests on the basis of cultural binds. The child does not give, or get an opportunity to show what he knows, only exhibits what he does not know. In that sense the test is biased and gives a reduced estimate for the child's ability. Now this is a topic that has been worked over in the literature a great deal. I think it has a good deal of validity to it but not as much as sometimes we think; I give you some examples of that if you want? NB

Q Go ahead.

A Well, where a child is asked to identify, as I mentioned before, who the prime minister of Australia is, this would be appropriate for Australian children and not American

Washington in one of the all Negro schools, would there be in your professional experience, or from your research, a substantial variation between the scores viz-z-viz one group and the other?

A You mean on aptitude tests or achievements tests, or intelligence tests?

Q Or all? Let's start with intelligence tests where you reach an IQ figure?

A You mean is there a difference in the intelligence test scores for low income vs middle income population?

Q That is right, given the same test which we have indicated would be standardized on all-White. How all three scores differ?

A That is a very complicated notion. Generally we take all children from the lower income populations and compare them on all children in middle income populations on all these tests. The Negro population's size mathematically, for their mean score would be below the scores of White middle class children. This doesn't mean all Negro children score below all White children. If they were exactly the same then 50% Negro children would score better than 50% of all White children. The two scores should overlap. As a matter of fact,

for the best estimate I have seen for this kind of data across the country is that only about 47% of all Negro children exceed, do better than 50% of all White children. A great deal of overlap, but the mean score for Negro children is little lower on most of these tests. However, that is not the whole story. I think what is terribly important is the nature of the difference between these two populations varies according to a large number of factors, not the least which is amount of time spent in school, nature of the school, nature of children, kind of school experience and curriculum they are getting. One interesting note on this is that in our measurements we have taken on preschool children in Washington right now who are going into such programs as Headstart and other nursery schools for very low income children on what I consider best test available --Stanford Binet. These children score as normally as you could expect any population anywhere in the United States to score. Their IQ, their mean IQ is 100. One hundred is the number that we give to the score that the average child in the standardization procedure gets, and it is not a magic number, it is simply the number that is assigned and all numbers are developed from it.

Q One hundred is the average?

A That is right, a hundred is what a child gets when he is an average child, an average child performing an average way. That is when an average fifth grader or average 10-year old performs, his score is arbitrarily identified as a 100. The average 12-year old gets an IQ of a 100, that is how it is assigned. Whatever it is he gets is called a 100.

Now, for what I consider to be a reasonably good example of low income prechool Negro children from low income homes in Washington, our data now indicate that their IQ, the average IQ, is a 100 and they have as normal a range as for example the population we happen to be using them against --the University of Minnesota experimental laboratory nursery school. So all the children we use are children of White faculty members of Minnesota. The distribution of their scores in Washington is identical to this particular population. We also know their older brothers and sisters who are in the school system now are scoring below average in that sense, that is, their mean IQ is not 100 and they are, I think, deteriorating. I have to say that in a special way, they are deteriorating as a consequence, I think, of their experience in the public school system.

Q And has your research indicated to you any reason for this deterioration past the preschool age? In other words, from the time they enter public school system in the District of Columbia?

A Yes, I think there are a number of reasons for it. There are at least two categories. One, some things are happening to the children when getting into school and other is somethings happening to teachers when they get into the school. I fell, at any rate, that as a consequence of the kind of educational experience and particularly of an educational experience that is characterized as a segregated experience, I feel that these children are developing a large degree of what we have been terming test anxiety.

MR. CASHMAN: Your Honor, at this point I'd like to interpose an objection to the answer that is being offered by the witness. Now when the witness was proffered as an expert in his field, I believe the Court accepted his expertise in the area of testing and measurement. Now we have suddenly broadened that category so that the witness is now talking about total educational experience within the District of Columbia school system. If the witness wishes to point out the specific differences that are being made between the preschool child

A Yes. I think the only people I could speak about on this particular point that I measured myself are the pre-school children that are in public preschools but not yet in the grade schools.

THE COURT: Maybe this would solve the problem. Suppose you tell us why, in your opinion, a child who tests at 100 in the Binet test, preschool, would test at less than that as he proceeds through school?

A Well, because I think for two reasons --

MR. CASHMAN: Your Honor, before the witness embarks on his answer, might I say I reiterate the same objection?

THE COURT: I see. That is overruled. Would you answer the question now?

A There are two reasons for that: one is that as the child progresses through school he begins to develop an increasing amount of fear and worry about being evaluated, that is, about taking tests, of showing what he knows and doesn't know, of having, in other words, his own self or his ego laid out on a table for other people to observe. His systematic response, and this is one of the things we are measuring, situations which he is generally involved in, evaluation situations to either withdraw from situations or become wildly

rampant in his behavior. Both strategies are self defeating as he begins to produce lower scores because of a desire to withdraw from a situation.

THE COURT: What you just said, wouldn't that apply to all children irrespective of being advantaged or disadvantaged?

A Yes, it would and one of the problems of being a disadvantaged child is they are the kind of kids under a unique amount of stress and respond to suppress as children do, and there is another side, and that is what is increasingly becoming apparant, is the role of the teacher in situations such as this. We have not done any specific research but I am familiar with this from the literature of the roll of the teacher and the teacher's expectations of the performance of the child in both testing situations and classroom situations in producing performance of the child in the class and appears in data that I can see now that a very, very large proportion of the amount of variability of children in the classroom and understanding of tests can be attributed to the kind of expectations the teacher has of how he will perform.

Now there are a rather large series of experiments in which teachers have been systematically fed information



without being known --without her knowing it-- fed information about what she ought to expect of a child. For example, she is given information about his intelligence that has nothing to do with how he actually performed in intelligence tests and the child is followed up with that particular teacher over a period of time and his performance measured and there are sharp and systematic differences in children whose teachers have been led to expect certain behavior.

Now the differences between the performance of children who have had experience with different teacher expectations is so great now as to give us reason to believe these teacher expectations account for a very large proportion of the variants of child behavior and when the teacher knows the child's intelligence performance is as low as it should be, if he is in a particular track, for example, and if s he knows he is going to perform a particular way, we have very substantial reason to believe the teacher will treat the child in precisely the appropriate way you will treat one who is to perform in that level. And that is another tremendously significant reason why the child, particularly those in lower levels of the track perform as low levels they do.

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MR. CASHMAN: Your Honor, I am going to move to strike this witness' answer to the last question; one, it



seems to me like de facto segregation can be defined in a multitude of ways, and I think that in the question, without definition, that we really don't know to what the Doctor is presently responding.

THE COURT: Well, maybe I can ask the question.

Doctor, in your opinion are test scores affected by the fact that a school is predominantly populated by one race or another?

THE WITNESS: Yes, sir, I believe that it is.

THE COURT: And would you explain your answer?

THE WITNESS: Yes, sir. There are a number of characteristics of a test score that I think are affected by the racial characteristic of the school within which the test is administered. One of the most important is that I do not believe that diagnostic instruments, that is, instruments that are designed to assess the characteristics of a child in order to make an educational decision, that diagnostic instruments can be appropriately applied to children from a segregated school. They state there -- I'm not explaining it now; I'm just describing what I think should be explained -- but the predictive value of a test, either an achievement test or an intelligence test, which is really what we mean by a diagnostic value of it, is that it predicts what a child will do in the future if we do certain things to him. The predictive value of that test is reduced

considerably and I think beyond the level at which it is useful at all, when administered to children in ghetto schools. Now the reason for that is that ghetto schools have an extremely high concentration of children on whom the reliability instrument, as we described -- as I tried to describe earlier -- is at dangerously low levels on the one hand, that the items of the test, that is, the things that the test is measuring, are inappropriate to the child's background and skills, that the contribution of the child's fears and anxieties that stem from his membership in a socially segregated environment, that is, in an environment that is debilitating to him because membership in a ghetto school is a definition or judgment placed upon him by the white community. A child who belongs to that kind of a school and who brings to the testing situation the lack of confidence and the fears in the testee's eyes, which is what I was really talking about, all of these put together, that is, the reduced reliability, the test bias, and the reduced sense of self worth, and therefore the heightened test anxiety make the test itself a relatively useless instrument. The amount of the child's actual ability that is measured by the test is so much smaller, and the amount of non-intellect capabilities that contribute to his performance of the test so much larger than in a normative population, that we are in fact measuring quite different things when we administer the same test to these two

ago when the high-horizon program was just started it was dramatically successful. It did do a great deal of good and, apparently, the nature of the good that it did do at that time was this rapid increase as the result of the interjection of some kind of a change into the system. And a few years later that impact had washed away and the Board of Education completely eliminated that program from its system in New York City.

BY MR. KUNSTLER:

Q Now, Dr. Cline, what, in your opinion, from your research, your studies and your reading, would have more than a placebo or transitory effect on the test scores of the children in the segregated classroom?

A Well, until recently, I think it was the opinion of a large number of social scientists -- but it certainly was my opinion -- that the opportunity of low-income children to become involved meaningfully in an integrated school system, integrated racially and class-wise, was a critical dimension of a compensatory program. I say until recently it was my opinion because having looked over the recent Office of Education Survey, the Study on Equal Educational Opportunity, I don't believe that I would consider this an opinion any longer. I am firmly convinced that the opportunity of a low-income child or a low-income group of children to participate in integrated educational environment is the critical component to produce a meaningful and lasting educational change.

in this case. And, consequently, it is not necessary to have everything an expert has ever read in his life in the record before he gives his opinion. I will overrule the objection just in the interest of moving this case along.

BY MR. KUNSTLER:

Q Now, Doctor, I show you a copy of the Equality of Educational Opportunity Report which we have just discussed, Exhibit A-4 for identification, and ask you to indicate to the Court what portion of that particular report which you read has influenced the last-rendered opinion?

A This is the Report of Equal Educational Opportunity, the summary of the report of the U. S. Office of Education Survey. And I was referring on page 28, I think, to the last paragraph on that page where the paragraph begins [reading]: "Finally, it appears that a pupil's achievement is strongly" -- and that is a very significant word to a professional reporter, as a psychologist or sociologist, and it was Professor Coleman, who, I believe, wrote that. And I know Professor Coleman's reputation, and when he says "strongly related" I am impressed with that notion. [Reading] "It appears that a pupil's achievement is strongly related to the educational background and aspirations of the other students in the school. Only crude measurements of these variables were used." And he defines those. "Analysis indicates, however, that children from

a given family background when put in schools of different social composition will achieve at quite different levels."

Now, this next sentence, I think, is equally important. "This effect is, again, less for white pupils than for any minority group other than Orientals. This effect is maximum for the Negro population. When given Negro children of comparable family background the opportunity to be involved with quite different kinds of school fellows and peers, there is a strikingly different achievement pattern between them. There is a maximum difference for the Negro population."

This is, by the way, a finding that replicates a finding that I think is relevantly related to this that I had in Prince Georges County on children. I think what is most impressive with this is that this is a summary of a national survey, and this is now beginning to look like a relatively universal statement of a relationship of these variables in the United States; and this is a terribly impressive phenomenon.

MR. CASHMAN: Your Honor, in order to accommodate the wishes of the Court to move along and in order to insure that I am making a proper representation for the defendants in this case, I would respectfully ask the Court to let me make it clear on the record that I have a continuing objection to this witness testifying to this particular document, that is "Equality of Educational Opportunity".

A You are asking me, do I agree with his conclusion, that these are all evidence of an erosion of the American self image and of the schism between the ideal and the reality?

Q That is right.

A Yes, I think I would largely agree with that conclusion. I think what we were discussing yesterday, the assignation of students on relatively illegitimate grounds for educational purposes on the one hand to educational programs which, I think, are reasonably restricted on the other make a very, very impressive combination of conditions under which the children will be unable to arrive at their fullest potential. I think that the arriving at educational diagnoses on the basis of testing alone can be harmful enough, but when combined with the assignation of a relatively rigid tracking situation it can reduce the performance of children in public schools to such an extent as to satisfy what Mr. Keppel is talking about when he says "erosion of the American self image".

Q Let me ask you one more question on that Dr. Cline. In that phrase to which I drew your attention "the separation of children by too rigid testing into different tracks", is that, in your opinion, descriptive of that portion of the Washington, D. C. School System? Is there a separation by too rigid testing into different tracks?

MR. CASHMAN: Your Honor, I am going to object to

classroom. Some ability groupings that are within the self-contained classroom but are limited on this specific subject material. For example, San Diego has ability grouping within the self-contained classroom particularly in beginning reading.

Q What is a self-contained classroom?

A A single classroom with a single class of children, so that if you have ability grouping within the self-contained classroom you have, in effect, a heterogeneous group, a wide range of skills and abilities within that classroom. The teacher, therefore, has an opportunity to move the children within the classroom and to create various mixes at various times according to the changing rate of development of the children concerned depending upon the curriculum. If you have ability grouping within the self-contained classroom and that ability grouping is limited to specific subject materials, such as arithmetic and reading, you have a great deal of flexibility and a great deal of opportunity to change the academic mix at any time you want. It is quite different from the tracking we have here, where a single curriculum is assigned to a single class.

Q Is there anything else you want to say about that, Doctor?

A No, other than the fact that I think we are all agreed on the necessity of matching curricula to children, and in many ways this is a much more general rubric for the term



"ability grouping". I think everybody has agreed on the necessity for some kind of ability grouping, and I don't think that is an issue, that is the goodness or badness of grouping per se. I think what is in issue is whether or not the kind of ability grouping -- and Washington's ability grouping, I would gather from looking at this table is a rather unique kind of ability grouping, unique in the sense of its being rigid and separatist and keeping children from mixing -- but the issue is whether or not the kind of ability grouping that you use is appropriate to the educational needs of the children. And my feeling is that an ability grouping system that not only is rigid in the sense of not allowing the child to change in his own pace and to move from one curriculum to the other in his own pace, in that sense it is bad. But much more important, in the sense that a track system tends to isolate children severely from each other, and in a non-integrated, segregated society such as ours in Washington, any further addition to the separatist characteristic of the school system I feel would be extremely debilitating.

MR. CASHMAN: Your Honor, may I interpose again at this point?

THE COURT: Yes.

MR. CASHMAN: Your Honor, it is going to be impossible for me to make any reasonable attempt to protect this record if



[After recess  
11:20 a. m. ]

THE DEPUTY MARSHAL: This Honorable Court is again in session. Be seated please and come to order.

Thereupon --

DR. ALFRED E. SIMONS, JR.

was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KUNSTLER:

Q Dr. Simons, would you state your full name for the record?

A Alfred E. Simons, Jr.

Q Would you indicate what your present occupation is?

A At present I am the Counselor at the Morgan Elementary School and I teach Educational Psychology at Howard University.

Q Now, Dr. Simons, would you indicate where your college education started, what institution?

A I received a Bachelor's Degree from Minor Teachers' College in 1946.

Q And following that where did you go to school?

A I received a Master of Arts Degree in Elementary Education from New York University.

A Only with the Youth Center.

Q And in connection with the Youth Center it dealt only with the schools?

A That is the academic schools. We had vocational schools also but this is the academic school.

Q Now, Dr. Simons, can you indicate, for the record, what the basic purpose of the study that you and Mr. Burke were conducting was?

A Well, the first study was to see if we could locate a cluster of common experiences or experiences common to a significant portion of the population in the Youth Center School that caused him to drop out of school and become delinquent. Therefore, we wanted to investigate their school background, their attitudes of schools, what they did in school, etc.

Q In other words, is it a fair statement to say that you wanted to investigate the school background prior to entering the Lorton Youth Center?

A That is correct.

Q And when you mentioned the follow-up -- C-10 -- report -- the report contained in our C-10 -- what was the purpose of the follow-up?

A Well, the follow-up grew out of the first study. In the first study, one of the things that we found was that these boys had normal or near normal intelligence, yet they were

severe under-achievers. We wanted to see how they do or how they measure up in the Youth Center School, do they do better or worse than they did in the public schools. So our idea was to find out just how are these boys doing. The purpose was twofold, (1) out of our own curiosity and, (2) I wanted to see if they were really teaching them anything at Lorton. Mr. Burke was so enthusiastic about the program and the way that they taught there and the way they were grouped and the attitudes of the boys, and we just suspected that they would do pretty well. Therefore, we looked at their records and investigated their achievements.

Q I will get into this at a later portion of my interrogation, but just to answer that last question, did you find that they did better in the Lorton School than they had done in the District of Columbia Schools?

A They did very much better.

Q Now, just briefly, Doctor, what is the makeup of the Lorton School at the Lorton Youth Center, what kind of a school is it and how is it compared to other schools with respect to the staff, equipment, facilities, etc.?

A I couldn't go into great detail about that because my inspection of the school was rather superficial. I do know that they have smaller classes than they have in the public schools. They are not compelled to go to school; there is no compulsory education. They do have qualified teachers and they

have the books and materials which they need. Also, they have services, such as counseling, psychological services, a sociologist or someone who keeps something going with respect to the relationship between home and the prison, etc. I would say that, generally, they have the ingredients for a good educational program.

Q Now, Doctor, in your first study, as I understand it, the open-ended study, you dealt with 75?

A Yes, 75 boys.

Q You dealt with 75 pupils, is that correct, at the school?

A That is right.

Q Can you describe what processes you used in obtaining information about the 75; first starting with defining what an open-ended questionnaire is, and then answering the second part of the question, how you obtained what information from them?

A As I said before, there were 150 students in the school. We wanted to get an accurate sample or an adequate sample -- I should say -- so we decided that since that was such a small number we didn't need to take a real random sample, as we do in studies when we have large numbers of participants. Therefore, we took one-half of the boys, which is a type of a random sample, taking every other one. To these boys we administered an open-ended questionnaire which we had constructed.

conclusions as to what was the -- I believe you referred to it as an educational syndrome -- which had some effect on their being dropouts or juvenile delinquents?

A Yes, we did.

Q And what was that conclusion?

A Well, we concluded that the factors which precipitated dropouts include poor school adjustment, truancy, under-achievement, normal and near normal intelligence, broken homes, among other things. I have a conclusion here [indicating].

Q What page of the report?

A I am trying to find it. It is on page 35.

Q Would you indicate, for the record, what your conclusion was?

A [Reading] "The inmate is most likely to be a poverty stricken, culturally deprived Negro dropout from an unstable home situation, who left school at age sixteen. The school record will reveal a history of poor adjustment, truancy, retentiveness and mobility. There is evidence that he will be an under-achiever. Serious deficiencies in reading, communication skill, and arithmetic will be apparent despite average intelligence. The grade level attained will usually be 7, 8 or 9. The inmate will usually have a history of juvenile sentences and commitments in institutions." I think that summarizes it.

Q Now, Dr. Simons, with reference to these students --

result, non-verbal result, as against the verbal result, cause you to come to any conclusion with respect to the differences in results?

A Well, our conclusion was that some of these boys were labeled as having borderline intelligence when, in reality, they had -- I can't say for sure but we would suspect, according to this data -- they had normal intelligence. Of course, this was in keeping with the findings in the first study when we studied I.Q.'s. We used the Revised Beta Examination and found that most of these boys had normal or near normal intelligence, normal intelligence being in the I.Q. range from 90 to 110. We have in here exactly how many boys gained how many points. We had 28 of them to gain 20 or more points on this Beta over the Otis; and we had 20 of them to gain from 10 to 19 points.

And we found also that these who were in that range that in the D. C. public schools we call basic, the I.Q. range is from 50 to 75, that on the Beta Examination the range went from 71 to 112. On the Otis the average I.Q. for this group, there were 24 of these boys who were in the basic range from 50 to 75. In this group the average I.Q. on the Otis Test was 62, which is really almost severely mentally retarded. But in this group of 24 boys on the Beta Examination the average I.Q. became 91, which is just within the normal range.

Q Is 100 the average?

A Yes, 100 is actually what we call normal but psychologists give 90 to 110 as the normal range.

Q Would you say, Doctor, then from this information that if they were assigned to the basic track, these 26 that we are discussing now out of the 69, that you have a situation where pupils of average intelligence, from the Beta Test, were placed in the lowest possible track, basic track, in the Washington, D. C. public schools system?

MR. CASHMAN: Objection, Your Honor. There has been no foundation for that question. Again, the hypothesis is that if these 26 were so placed. I think the assumption must relate to the proof in this particular lawsuit. We have no proof in this area. And, again, Your Honor, I would ask that I be given a continuing objection to this witness' evaluation between test results and the quality of the tests given as distinct from his expertise.

THE COURT: Let's take first things first. What basis is there for the assumption that these 24 boys were in the basic curriculum or track?

THE WITNESS: We didn't assume that they were there. I am saying that on the Otis Test they came up within the range of 50 to 75 I.Q. Anyone with an I.Q. of 75 and below, and not on the Otis Test but on an examination by an individual psychologist is assigned to the basic track.



THE COURT: That is your understanding?

THE WITNESS: No, this is what it actually is. I worked in the D. C. public schools. I am a counselor and so I have much to do with assignments, testing, etc.

THE COURT: You are simply saying that if these tests had been received from these 24 in the D. C. schools instead of at Lorton they would have been assigned to the basic track?

THE WITNESS: Not immediately. Before a person can be assigned to the basic track he must be tested by a psychologist. The Otis Test is a group test. However, if he scores between 50 and 75, or say he scores below 75 on the Otis Test, and he is not doing well in school, then what is a form 205, a request for an individual examination, is made out and he is tested by a psychologist. If, on this individual test, his I.Q. is below 75, then he is placed in the basic track.

THE COURT: And this is the kind of work you do for the D. C. public schools?

THE WITNESS: No, I am a counselor for the D. C. public schools, not a psychologist in the D. C. schools. I do testing and we do testing programs for the schools.

THE COURT: I see. And this is your understanding of what happens in the D. C. public schools as far as your knowledge with respect to your counseling duties?



we have an answer to that we have at least a definition of what the witness thinks or categorizes as "culturally-deprived" so that we can keep some consistency between the terminology that we use.

THE COURT: All right.

Doctor, would you define "culturally-deprived" as used in that answer?

THE WITNESS: Well, there are many terms going around, such as culturally-deprived. We say "culturally-disadvantaged" in our second study. We also say "educationally-deprived". When we say "deprived" we mean something that has been denied this person. Culturally-deprived means that these boys or these persons have been deprived of the type of culture that we expect normally an individual to be exposed to. People use many of these terms today synonymously. I don't. In this study, if we say "educationally-deprived" we mean that these boys have been deprived of an adequate education, which they have been. Disadvantaged - they are at a disadvantage because they have not been exposed to the culture that we normally expect an American child to be exposed to. Now, "poverty-stricken, culturally or socially alienated", all of these terms are in the literature and they all apply to boys like these, who live in poor areas. We can call them ghettos, if you wish, because they are all made up of one racial composition. They have one

parent, usually, in the home. This is, usually, the mother. Sometimes if they do have two parents maybe both of them are alcoholics. They can be on welfare or if they happen to work they make such a little bit of money that they are unable to pay the rent all the time. This is why you see so many of them sitting out on the street. These boys are deprived. If I say culturally-deprived or culturally-disadvantaged they are deprived or denied even the opportunity to become acquainted with what we call American culture. And this happens. I work with these children every day and I talk to boys. And I have talked to boys in Lorton and in the Receiving Home at Laurel and Maple Glen and the other institution out there, and, usually, this is where they come from. They are people who have been denied everything that they should have a right to by having been born an American.

Does that satisfy you?

THE COURT: Thank you very much.

BY MR. KUNSTLER:

Q Dr. Simons, after you had looked at the I.Q. scores, both on the verbal and non-verbal, then I take it, from your report, you turned your attention to the school itself, which I think is called, is it, the Valley Central School?

A Valley --

Q Which is the school at the Lorton Youth Center?

A That is the school.

A     You see, actually, we are not thinking about the schools in the District of Columbia, we are thinking about the schools in the United States that do have disadvantaged Negro children in them. You see, the pattern is the same the country over. It was made very real to me when I worked last summer with Dr. Blake and his research associates on the program to evaluate the desegregation instituted, and in different communities I found the same thing exists throughout this nation that exists here in Washington, D. C., that the Negro boys and girls are deprived of an education.

Now, one of the things that does it here and does it elsewhere is this administering the Otis Test and taking this I.Q. that is gained on the Otis Test as an indication of the intelligence level and the ability to learn of this child.

[The witness was interrupted at this point by the Reporter in order that a new pad of stenotype paper could be inserted in his machine.]

THE WITNESS: I said some people administer this test and take the result as an indication of the ability of this child to learn or his intelligence level, when, in reality, it may not be. I think this study points this out.

Therefore, in a chapter that we called "Indications for Schools" we recommend that the administering of the Otis Test for mental ability for this type of population be

discontinued. Actually, in the D. C. public schools they did stop administering the Otis Test in 1966 in the 4th grade. I don't know whether they will stop it in the 6th grade or not, but they did stop that for the 4th graders.

BY MR. KUNSTLER:

Q According to B-10 in evidence, as of the 1965-'66 year, the Otis Quick-Scoring Mental Ability Beta Form EM Test is given to the 6th grade in the public school system?

A Yes.

Q You make the statement in your report -- and I just wanted to ask you to explain that -- as follows on page 30 of C-10, which is the blue one [indicating]. You said [reading]: "The practice of administering the Otis Test for Mental Ability to a school population at least 60% of which is culturally disadvantaged with serious reading and language problems is indefensible if not dangerous. It is not compatible with widely accepted views that this instrument is highly prejudicial to youth with reading and language problems."

Can you explain exactly what you meant --

MR. CASHMAN: Excuse me. I have an objection. Your Honor, are we getting into a repetitious area now? It seems to me that this witness, in his last answer, displayed the fact, even though the defendants objected to him testifying in this area, clearly and plainly, and at length, what the

MR. CASHMAN: I will have made an attempt to consult every witness.

THE COURT: You will help him?

MR. KUNSTLER: Yes, I will be in town.

(IN OPEN COURT:)

Whereupon,

DR. ALFRED EDGAR SIMONS, JR.

resumed the stand, and testified as follows:

DIRECT EXAMINATION (continued)

BY MR. KUNSTLER:

Q Dr. Simons, when the hour ended last time or this morning you had just completed with me a discussion of the difference in the educational achievements of the students at Lorton School, the Central Valley School. I would like to ask you this: Do you from your analysis of the differences you found, the charts which you have indicated in both reading and arithmetic and from your own experience with the District of Columbia system and your own educational background, can you give the Court your opinion as to why the students do better or did better at Central Valley School than they did in the District of Columbia School System?

A Well, I think several factors are involved. One thing, these boys were motivated. That is, they could see

a goal in front of them that was attainable.

Many of them had not been able to finish high school in the District of Columbia, but out there they were given an opportunity to finish high school. There were all sorts of opportunities for them. The teachers talked to them as if they could learn. They were tested. They were not competing against other students. They were competing with themselves and if it went well with the probation officer they could get out earlier if they learned well and were able to do something when they left.

The other thing I think I said before was that they were not compelled to go to school, to go to a place that was displeasing to them as many of the schools are to students today.

Q To your knowledge, Dr. Simons, is there a track system employed at the Central Valley School?

A There is no track system at Central Valley School.

Q Are the classes to the best of your knowledge the heterogeneous classes?

A They are.

Q Dr. Simons, can you just describe because I don't think the record has this, the physical facilities out at the Youth Center. Is it a prison for example or what is it?

year and had taken these examinations.

Q I see. So you wanted to examine their performance upon entry and their performance a year later.

A A year later.

Q Now, did you do this in terms of comparing IQ results?

A Well, the IQ wasn't given a year later.

Q Just once.

A Just once.

Q Right. Now the achievement tests, were they given upon entry and a year later?

A That's right.

Q All right. Now, in what areas were these achievement tests given?

A Reading and arithmetic. I don't know whether we had language in here or not. It was reading and arithmetic.

Q And was there any subdivision made between the boys, 69 boys that you compared in your second study, did you divide them by any means at all?

A We divided them by the boys who were above 75 IQ, on the Otis examination, and the boys who were below, who were 75 and below on the Otis test of mental ability.

Q Why did you choose 75, Dr. Simons?

A Because 75 is the point at which a person is declared retarded enough to be placed in a special class in the public schools.

Q I see. Now, that 75 figure, is that the sole and operative reason why a child who attains that score would be placed in a special education situation in the District school system?

A No.

Q There are other factors?

A There are other factors?

A There are other factors.

Q I see. Now what other factors would -- let me go back one step -- You are a counsellor at Morgan School?

A Yes, I am a counsellor at Morgan School.

Q In connection with your counselling employment there you are concerned with the placement of children within different ability groupings within that school?

A Somewhat.

Q Somewhat. Would you describe that to the Court?

A If a child is not achieving in school sometimes I am asked, if they don't have an IQ score for them, sometimes I am asked to give them a test, or to make some assessment of their ability, and if I feel, as the teacher feels, that the child needs an individual examination, I help the teacher



to refer this child to a psychologist for an individual examination.

Q I see. Now, in your experience, you have indicated this 75 figure was one of the elements that would be considered as to whether or not within our school system a child would be placed in a special education curriculum.

Now, at what year, within the Morgan school, would such a IQ score be given to a child, when would be the first time that a child would take an examination that would give the child an IQ result?

A An individual are you talking about, or group test?

Q No, I am talking about a group test now, because you have indicated that 75 was your demarcation at the Youth Center, with respect to the 69 boys that you surveyed there, and you further indicated, and you can correct me if I am wrong, that you were referring to the Otis self-administering test?

A That is right.

Q Now, I understand that the Otis self-administering test is a group test, is that correct?

A That's correct, it is a group test.

Q All right. Then I am referring to not an individual IQ test, we can get to those later, I am referring

te, when is the first time at Morgan school a child is exposed to a group IQ test or intelligence test?

A Until this past year it was grade 4; now it is grade 6. I don't know whether that will be next year or not.

Q But prior to last year it was --

A Grade 4.

Q -- grade 4, and last year it was grade 6.

A That is right.

Q All right.

Now, what did 75 attainment or IQ result mean at Morgan School in terms of where a child would be placed at that school?

A The 75 on the Otis test examination in itself didn't mean anything.

Q I see. What other factors, Doctor, were considered at Morgan school in terms of evaluating a child who, say, got a 75 or less in the IQ group test?

A Well, if he was not achieving, let us say, if he was 2 or 3 grades behind, say a child in the 4th grade was operating on a first grade level or even below and got an IQ score in the Otis test of 75, -- by the way, this Otis test that I am talking about in the 4th grade is not a reading test, it doesn't require reading skill at all, it has a verbal part in it that people misunderstand, in language,

such as "Mark an X on the girl who is at the opposite end of the road," or something like that.

What this meant was that along with the IQ score, the achievement, in the teacher's judgment the child would be referred for an individual examination.

Q And who administers individual examinations?

A School psychologists.

Q I see. And the school psychologist gives that examination in a one to one situation?

A That is correct.

Q Is that right?

A That is right.

Q That is, he administers it and one child sitting in front of him takes that examination.

A That is correct.

Q I see. Now, what other factors go into the evaluation of such a child, Dr. Simons?

A What do you mean, what other factors go into the evaluation?

Q Well, let me ask you direct questions then.

Would an evaluation of the child's class standing or school performance be an element that would be considered by the school psychologists in evaluating the child?

A Yes.

THE COURT: Rephrase it so it doesn't require a yes or no answer.

BY MR. KUNSTLER:

Q Would you indicate to the Court whether you believe that heterogeneous classes at the Lorton Youth Center might have or might not have something to do with the progress of these boys?

A Well, I believe that heterogeneous groupings help students at all levels, whether they are bright or dull or average. Heterogeneous grouping is much superior to homogeneous grouping, because the boys, say, the boys at Lorton, if we are talking about them, get to know each other, get to respect each other, to assess themselves more realistically, because they see people other than people exactly like themselves.

So that generally I would say that heterogeneous grouping is far superior to homogeneous grouping.

Q And if you were considering the factors, Doctor, as you have indicated for my brother Cashman on his cross examination, would you include heterogeneous grouping, as they have at Lorton, along with other factors that might be attributed to their improvement at Lorton?

A Well, I could not say yes or no that that is an actual factor. It is there, and, as I said, I believe

heterogeneous grouping is superior but, probably. I wouldn't say, for sure. Probably.

Q And that would be true of all the factors that have been mentioned on cross examination?

A Yes, all of the factors together help to bring about a certain result. This improvement is due to several factors; heterogeneous grouping may or may not be one; I said it probably is. I wouldn't testify to that as yes, definitely, this is a major factor.

Q What I am trying to get, Doctor, that would be the same as all the other factors you mentioned on your cross examination, such as good food and so on.

A Yes, because for each individual it is different. Some people can come right out of the slums, broken homes, hungry and poor, disadvantaged, and still reach the top, and some who were born at the top can tumble all the way down to the bottom.

Q Now, Dr. Simons, one last question, with reference to what you knew about these young men prior to their entering Lorton, with reference to the Washington, D.C. school system, you did know their grade levels, is that correct?

A Yes, we had, well, we had the grade level on entrance to the Youth Center.

(In open Court:)

THE COURT: For the record, it should be noted that the clerk now has in her possession three copies of the report to which Dr. Mood referred in his testimony. One copy will be marked for identification as an exhibit in this case, as indicated at the time of Dr. Mood's testimony, and one copy will be made available to each side.

And it is further the decision of the Court to issue a subpoena or otherwise cooperate with counsel for either side in getting any data which would support that report, that is, the report to which Dr. Mood referred, including the confidential data to which he also referred, and which counsel for the Office of Education would be made available on request of the Court.

All right, sir, would you call the witness.

MR. KUNSTLER: Your Honor, I think they are on cross examination of Dr. Cline, as I understand it.

MR. CASHMAN: That is correct, Your Honor.

THE COURT: All right, sir; call Dr. Cline.

Thereupon

DR. MARVIN G. CLINE

was recalled as a witness for the Plaintiffs and, having been previously sworn, was examined and testified as follows:

from the Stanford-Binet and IQ intelligence quotient and it is made up of the performance the child exhibits on the test and his chronological age, the ratio between the two.

Q Now, have you indicated with respect to these children that the average IQ was 100?

A That was the result of this particular testing, that's right.

Q Now, what do we mean when we say the average IQ is 100, what significance does that have, Dr. Cline?

A That means that the mean score that was accomplished by these children was the same as the mean score that was accomplished by similar children, similar age children in the standardization population.

Q I see. And the standardization population was the middle class, white population?

A That's right.

Q Doctor, have you been doing anything in connection with Project Head Start, are you associated in any way with Head Start?

A I am a consultant to Project Head Start.

Q And how long have you been a consultant?

A A few months, I think.

Q And would you describe to me what your activities have been in connection with that project, as a consultant?

derive incidentally from your studies in other areas?

A It is partly the latter and partly having gone over the report, I believe, in the Puzinski hearings of ability grouping in major cities.

Q I see. Now, the report in the Puzinski hearings is a very descriptive type of analysis of pupil ability grouping, is it not?

A That is right.

Q And it would be fair to say that as those pupil ability groupings appear in the Puzinski report the information is far from detailed, is that not so?

A Yes. One gets the impression that many school systems are rather reluctant to report the actual degree of rigidity of their systems. They like to make it seem more flexible than it really is.

Q Do you know whether or not as they appear in the Puzinski report the description of the system was the language that the systems themselves used to describe their pupil ability grouping or do you know whether or not the language used in the Puzinski report is the interpretation given to different school systems by the women who gathered this information for the Library of Congress?

A Yes, I think it is the latter.

Q I think it is, too. But the Puzinski report in



this particular reference does indicate quite a number of schools that do have some form, however distinct or however flexible, of pupil ability grouping, is that not so?

A Yes.

Q It is obvious then, Doctor, is it not, that within school administrations that different boards of education and different school systems themselves differ on what precisely is the form that teachable groupings should take? There is a legitimate dispute of opinion about that, is there not?

A Yes.

Q Doctor, within your familiarity of the District of Columbia school system, and I am not talking now in terms of your expertise, have you had occasion to study the amount of cross tracking that takes place in the District school system?

A I haven't studied it myself. I think I am moderately familiar with it to the extent of some of the reports of the Superintendent. On the extent of cross tracking, I have seen some of the reports. I don't have them with me.

Q Doctor, if I ask you among the high schools, could you indicate to me for the recent year the number of senior high school students who had cross tracked programs in the District of Columbia school system?

A No, I haven't committed any of those figures to

memory.

Q Doctor, would not an element of flexibility or the lack of it within the so-called track system in the District of Columbia be the amount of school children that are crossing tracks within that system? Wouldn't that be an element of the flexibility of the system?

A It depends on how you want to look at it. It could either be an element of flexibility or an element of indication of the unworkability of the system.

Q That is what I said, either flexibility or the lack of it. But the figures of cross tracking bear very heavily on this particular area, isn't that so?

A Well, not necessarily. It depends on what the nature of the cross tracking is, not simply the amount, but also the nature of it.

Q Are you familiar with the nature of the cross tracking in the District of Columbia school system? You indicated that you could not give me any figures in terms of amount.

A Not in the details. When I look at the data, I was looking at it in order to discover what the nature of it was.

MR. KUNSTLER: Your Honor, I would like to object to this line of questioning. I don't remember Dr. Cline talking about cross tracking on direct examination. We have limited our direct, I think, to the testing program and that

you that it has been cleared up. The Court has indicated that it will lend its efforts to whatever efforts either side may wish to make in terms of getting what data is going to be made available to us.

Now, it is not certain exactly in what dimension we are going to receive data from the Office of Education. That will depend on our attempt and their response. I don't know how generous they are going to be.

Further, there are other reasons, and I think they are in the record, for the position taken by the defendants that the O.E. report is inapplicable, and it relates not only, Your Honor, to the fact it was a confidential submission, as we first believed, but also, Your Honor, that, and I don't want to go into the details of it, but that it is a broad study which analyzes the District as a part of other studies and the result is not with respect to the District of Columbia but rather with respect to, I think, a northeast quadrant or a section of the country which would not make it relevant in the eyes of the defendants.

MR. KUNSTLER: That is not my point, though.

THE COURT: My point is this: that I am not prepared to rule on the admissibility of that report, but I do intend to take testimony with reference to that report,

subject to objection.

MR. KUNSTLER: That was my point, Your Honor.

MR. CASHMAN: Very well, Your Honor.

THE COURT: I think we have it now. Let us go on with this witness.

MR. KUNSTLER: All right, Your Honor.

THE COURT: Do you have much more, Mr. Cashman?

MR. CASHMAN: Your Honor, I would expect for another 45 minutes.

THE COURT: All right.

(IN OPEN COURT:)

THE COURT: Dr. Cline.

BY MR. CASHMAN:

Q Dr. Cline, in your experience, have you designed tests?

A Constructed tests?

Q Constructed if you will.

A Yes, I have.

Q I see. Now, what elements go into the construction of a test, the broad elements now that you use when you construct a test?

A Well, first it is necessary to define what it is that you want to test and then to construct materials that you feel are appropriate for that which you intend to measure.

(Whereupon, the reporter read back the question as follows:)

"Q Doctor, don't you think it is important in a functioning educational situation, such as the operation of a public school system, for the administrators of that school system to know how far behind, in terms of achievement, that group of pupils within their system who are disadvantaged and from low income situations, are with respect to the group of children within that same system who may be middle class whites?"

THE WITNESS: Yes, I do.

I think, I do think it is important for a school system to have that information. I think that is one of the reasons why I think it is so terrible important for us to be aware of the errors of measurement contained in most of the tests that are designed to evaluate the achievement levels of the low income children.

BY MR. CASHMAN:

Q So Dr. Cline, the results of such an examination can be put to good educational ends by a school administration who use these results properly, is that not right?

that it is in the child, we ordinarily try to orient him, as you orient one's self towards an object, and we are now talking about a child orienting himself negatively towards the school situation.

Q That's right, that is exactly what I am talking about and I am simply asking you if this attitude existed in the children that we are talking about outside of the way he is treated in the school.

Let me put my question as simply as I can: If a child in the low economic negro background has a negative attitude towards schooling could that negative attitude towards school flow in part from his status as a low income negro child, as we have defined that term?

A No, I think the negative attitude towards school comes from the child's experiences in school.

Q All right.

Then, I will ask you, Doctor: Is it your answer that the negative attitude towards school is exclusively in those children we are talking about, solely a derivation of experience in school. Is that what you are saying?

A Well, I don't think I can answer any question having

to do with that kind of behavior solely from that aspect. I am not sure I can make as definitive a statement as that.

Q Doctor, let's go on to another factor in the disadvantaged child.

Let us think about the limited expression of ideas of a child in such circumstances. Would you say that this factor that a child may have in such circumstances stems from his status as a low income negro child?

A Well, what do you mean by limited expression of ideas?

Q I mean in terms of the child's ability to articulate ideas that are in his mind.

A In school, or in the neighborhood?

Q Well, would you say that this disability, whether it occurs in the school or in the neighborhood, is it a factor that stems in part from his status as a low income negro child -- is it characteristic of low income negro children by virtue of the fact that they are negro and that they are unfortunately coming from a low income status?

A Well, that is a complicated question.

I am not sure that you -- are you saying that in the low income negro child he has difficulty in expressing himself



verbally as being able to communicate some idea that is inside his mind, is that difficulty by virtue of his being a member of the negro community of a particular city and having a low income, low family income?

Q Yes, does that description that I gave of his being negro and having a low income, contribute to the fact that he may have limited expression of his ideas?

A Well, you are starting out with the assumption that he has limited expression of ideas and that is one of the reasons that I have difficulty with the question.

We know that there are many instances in which some children are -- many of the low income population have -- have some difficulties in expressing themselves verbally, in certain circumstances.

In other circumstances they have ability to express themselves verbally and that some person does appear to be highly verbal and rather facial, and perfectly capable of engaging in highly complicated and very sophisticated verbal interchanges with other individuals.

Their communication patterns are so complex as to be able to maintain highly complex social relations in social



did it not?

A Yes, I think so.

Q And that colleague was Dr. Justisen, was it not?

A Yes.

Q And she indicated to you that she was going to testify and she asked you if you would be interested also, is that not correct, Doctor?

A Yes.

Q And since you knew a little about the track system and had written one of the earlier reports, you put the report together and presented it in February of 1965, is that correct?

A Yes.

Q Now, Doctor, you indicated that you made a study of the elementary school in the District of Columbia -- was that the Plummer School?

A Yes.

Q What was the purpose of that study again, Doctor, please?

A The purpose of the study?

Q Yes, what was the purpose of your making it?

A Well, as I said, the graduate students were looking at the junior primary performance -- this is the group of children which is set between the kindergarten and first grade, that was put in their because of their supposed lack of readiness to read, students who were judged as to readiness to read are put in the regular first grade and we simply wanted the performance of these children to be read together with the performance of students who continued, really in order to see whether or not this kind of experience really resulted in a significant improvement in the performance of these children.

Well, this constitutes a kind of tracking beginning at that point, you see, and we thought it would be interesting to see for the purpose of this hearing what happened to these children who went through school.

Q And would it more accurately be said that junior primary is a grade, or is a track?

A Well, I called it a track.

Q Yes, but would it be more accurate to say --

A Well, in my opinion, a track.

Q It would be more accurate to say a track?

A Yes.

of the term "disadvantaged child", is that right?

A No, because I think that people are really talking about poor children, or low income children.

Q I see. Do you associate, then, the use in your own mind of the term disadvantaged child with poor child?

A Yes.

Q And do you have any figure in mind that would represent the total family income from which such a child would come?

A Well, different figures are used by different people, but \$3,000 is a general figure; some people use as much as \$4,000 for a family being poor.

Q But you would say that around \$3,000 would be indicative of a poor family income, is that correct?

A Yes.

Q Doctor, do you know whether the basic track is a special education program?

A Well, special education -- what do you mean by that?

Q Well, is the basic track a program that is calculated to meet the needs of retarded children?

A I can't answer that.

Some of the figures that I have looked at, for example,

in one school, in one junior high school, 36 per cent of the children were in the basic track.

This being the fact which I have identified, I cannot say that all 36 per cent are retarded, so I can't say that this track deals with that kind of population.

Q I see, based on the figures that you know?

A Yes.

Q Would those figures be limited to what you have just described to the Court -- that is this evaluation of a school where there were 36 per cent of the children?

A Yes.

Q Doctor, are you familiar with the term educable-mentally retarded?

A Generally familiar with the term, yes.

Q What does that term mean to you?

A I can't give you a technical definition for it. It means essentially that the child is mentally retarded but that he will benefit from some level of education. It means that he could be educated to some degree.

Q Do you know whether or not the District of Columbia basic track is calculated to meet the needs of the children who

are educably mentally retarded?

A Well, again, I wouldn't testify for the same reasons.

Q Your answer would be the same?

A I wouldn't be willing to classify 35 per cent of any children in any school building anywhere with those labels.

Q Doctor, in terms of IQ tests, that are individually administered, is it your opinion as an expert in this field that they may be used as a factor in evaluating the educational skill of a child within a functioning public school system?

A Education skills?

Q Yes.

A Well, what do you mean by that?

Q Well, say intellectual ability of the child?

A No.

Q Would you say it would not be a factor, even?

A Not for intellectual ability, no.

Q I say, would it be a factor in determining anything with respect to that child?

A Well, it might be one of the factors that people might take into account to classify some kinds of children.

Q In what kinds of classification?

Q I see.

Who would be the one who would administer such a test, Doctor?

A Well, the psychologist.

Q Doctor, you are aware of the fact that within the District of Columbia Public School System we do give individual IQ tests, are you not?

A Yes, I am aware of that.

Q Would you be familiar with the kinds of individual IQ tests that we give?

A Yes.

Q I see. And would you be able to tell us which tests or do any of them come to your mind at all?

A Well, there is the Stanford-Binet and there is the Weschler.

Q Are there any others that occur to you at this moment?

A These are the two that I know of.

Q Doctor, you mentioned psychologists.

Did you know that there are school psychologists within our own District of Columbia Public School System?

A I don't know it as a matter of fact, but I would

presume that there are.

Q Well, then, Doctor, may I assume from your last answer that you cannot give me the number of school psychologists that we have in the District of Columbia at the present time?

A No.

Q Are you aware whether or not we have clinical psychologists in the District of Columbia School System?

A No.

Q Doctor, in terms of educational achievement in the public school system, what criterion did you use in your determination of whether or not a system is succeeding?

A Well, achievement tests is one in relationship to how long the children have been attending school.

Q Would it be important to examine these achievement test results against the national norm in order to know how your public school system was working?

A Well, yes, you would look at it in relationship to the national norm.

Q Doctor, in terms of group achievement tests, does the national norm appear on the test itself?

A Well, it appears on the test, yes.

They have a series of scores and there is an average score.

This score is sometimes referred to as national norm.

Q Yes, and would that facilitate a comparison between the achievement test results for individual children as against the national norm testing?

A More for groups of children than individual children.

It is dangerous to use these things with individual children.

Q I see. Since it is a group it is used for group testing?

A That's right. It is looked at in gross terms, in broad groups, of what has happened to the student in terms of their education.

Q Doctor, do you personally favor the broad principle of pupil ability grouping?

A As a broad principle, yes, a gross principle.

Q I understand that you do not favor the junior primary grade, for instance?

A No, I do not.

Q You do not favor the honors curriculum in the elementary school system, is that right?

A I don't think I stated an opinion on that specifically.



Q Well, you could let us know what it is.

A Well, I think I would disagree with the honors curriculum at the elementary school level.

Q And would you say that the honors curriculum is a proper place for students or that the honors curriculum has a proper place rather at the junior high school level in your opinion?

A Yes, it has a place in the junior high school.

Q Doctor, what is your opinion or what is your feeling with respect to the high school?

A Yes, I would have no objection to having this grouping at these levels.

Q Doctor, can you tell me what tests and measuring factors would indicate to you that a child may be mentally retarded in some way?

A Well, I don't think you can do that with a single test.

I think this is something that you would have to stick with over a period of time.

I don't think you could even make a single judgment on that because it is too important a decision.

Q Well, wait --

THE COURT: Have you finished your answer, or are you still answering the last question, Doctor?

THE WITNESS: Well, I wanted to say to the counsel that he is carrying me afield here.

This is a highly specialized called special education which is a particular field in and of itself and he is asking me specific types of technical questions relating to special education and education for the mentally retarded.

THE COURT: Well, Doctor, if any question you are asked appears to you out of your area of expertise you might so indicate.

THE WITNESS: Yes.

THE COURT: All right.

BY MR. CASHMAN:

Q Doctor, are you qualified to tell me whether or not in your judgment a special education program would be beneficial for a child who was professionally determined to be mentally retarded to some degree?

A Yes.

Q Yes, you are qualified and yes it would be?

employment, please?

A I am employed at Howard University as an Associate Professor, Department of Education, College of Liberal Arts and Sciences, teaching in the undergraduate school and in graduate school there, and giving one-fifth of my professional time to Institute for Youth Studies. This was formerly known as the Center for Youth and Community Studies.

Q Now, Doctor, what is your specialty in terms of educational experience?

A Special education.

Q Now, does special education relate to the mentally retarded?

A Yes, it does.

THE COURT: Doctor, does it relate only to the mentally retarded?

THE WITNESS: No, I didn't hear the word "only." I guess I passed because I thought more was coming. Special education is a comprehensive field, covering any area of ability or disability which calls for special educational programming.

Q BY MR. CASHMAN:

Q Doctor, what courses do you teach to the undergraduates at Howard University?

A I have taught only one course in the undergraduate

sure of your question.

THE COURT: Well, institutionally required, or what?

BY MR. CASHMAN:

Q Parents?

A Parents, social institutions, society in general, if necessary.

Q And Doctor, in terms of the profoundly retarded, would you tell me some of the most obvious characteristics that they exhibit?

A They are organically impaired or handicapped to a point that is easily observable, that is, they are unable to feed themselves, to dress themselves, frequently unable to walk or to talk.

They are, in a very gross term, crib cases, that is, unable to negotiate the usual physiological processes.

Q Now, Doctor, would the profoundly retarded be able to attend school? I mean public school.

A Public schools in the usual sense, no.

Q Now, would you describe for me, please, and the Court, the subdivisions of the mentally retarded who are not quite as retarded as the profoundly mentally retarded?

A Yes. This group is commonly referred to as the severely retarded.

Q Now, Doctor, a term has come into usage called the trainables. Are trainables also the severely mentally retarded?

A Yes, these terms are used interchangeably.

Q I see. Now, would you describe the severely mentally retarded for us, Doctor?

A Well, such severely retarded persons are those whose mental, social and adaptive deficits are such that they will require supervision as long as they live.

Q And by whom will this supervision be afforded?

A Well, by parents, insofar as they are capable of administering such supervision, by institutions, residential homes, by public school personnel, if the circumstances permit this.

Q Now, Doctor, would you describe for the Court, please, the most common characteristics of the severely mentally retarded?

A Well, by your question you mean physical characteristics?

Q Whatever characteristics --

A Or mental?

Q Whatever characteristics may appear, whether they are physical or mental.

A Well, physically, these youngsters have developmental delays that are quite marked. They are slow to walk, to talk, and their activities are delayed generally, both in rate and quality, to a point where it is quite observable that they do not come anywhere near the normal or the expected standard for their ages.

Q Now, Doctor, to hark back for a moment to the profoundly mentally retarded; in terms of any tests, and I am talking now in terms of intelligence tests, is there any test result that may give an indication that a child is profoundly mentally retarded?

A Yes. I think, considering all the qualifications and limitations of such tests, which Dr. Cline gave testimony to yesterday, there are some which do give a rough index of the degree, the nature and the quality of the retardation.

Q I see. Now, in terms of the President's definition, the President's task force, on mental retardation, definition of, say, profoundly retarded, does that definition encompass a test criterion of those who are profoundly mentally retarded?

A Do you mean an IQ test criterion?

Q Yes, an IQ test.

A Yes, such a limitation is spelled out.

Q I see. Now in terms of what score, on an

intelligence test, does the President's task force on mental retardation classify, at least by way of an indicator, a child who may be profoundly mentally retarded? What would be the score?

A      25, 0 to 25, I believe, but I would like to  
check it, if I may.

Q      You may.

A      I might explain here that the American Association on Mental Deficiency uses this definition which I gave you. The American Psychological Association uses a different definition, and the American Psychiatric uses a different definition. So this is why I have to doublecheck on myself.

0 to 25.

Q      And, Doctor, while you have the book handy, may I ask you if there is not also an IQ classification in terms of the President's task force on mental retardation for those who are severely mentally retarded?

A      Yes.

Q      Would you indicate the range of such score to the Court, please?

A      25 to 50 IQ.

Q      Now, Doctor, in terms of children who are mentally retarded less severely than the category that we have been talking about, what is the next category of mental retardation?

A        Moderate retardation.

Q        I see. Now, in terms of the characteristics that are exhibited by a child who is moderately retarded, could you describe such a child for us, please?

A        Well, such a child is, again, delayed both in rate and quality of intellectual, social and adaptive development.

Q        And how do these characteristics appear physically, or, do they -- let me ask you this question: Do they appear physically?

A        Yes, they do.

Q        I see. Would you kindly describe the way that they appear?

A        Again, with moderate motor handicap, that is, muscle, first muscle skill, coordination, with some signs of visual disturbances, of hearing, losses or deficits of one sort or another. This kind of condition.

Q        Now, Doctor, are children in this category dependent in the sense that they will have to rely, during their lifetime, on their parents or an institution or are they semi-dependent, or what is their classification with respect to that?

A        Well, may I ask you, for what part of their



lifetime do you mean?

Q Well, I am talking about their entire lifetime.

A Are you talking about, you know, what we can expect over life?

Q Yes.

A Generally?

Q Yes, generally.

A These people are at least expected to assume semi-independence in the social and work world.

Q And, Doctor, in terms of the President's task force on mental retardation, is there a barometer in the intelligence test field by which such children are gauged?

A Yes.

Q And would you kindly indicate --

A From 50 to 69.

Q Now, Doctor, from the category of retardation that we have just been discussing, what is the next category in terms of approaching normality?

A The mild retardation.

Q I see. Now, would you describe for me, please, what you mean by mild retardation?

A Those youngsters who can be expected, with proper training and services, to assume a place in the work world as independent citizens.

Q I see. Did you indicate that such children will, in general, eventually become independent?

A Can become.

Q Can become independent.

A Yes.

Q Thank you. Now, in terms of the President's task force on mental retardation, is there a classification according to intelligence tests with respect to the mildly retarded?

A Yes, there is. May I check on this again?

Q By all means.

A 70 to 84 -- I am sorry -- I was going by a chart book and I gave you the wrong IQ for the moderate. Moderate retardation here is in the educational category of trainable and the IQ is 40 to 54.

Q 40 to 54.

A 40 to 54.

Q 40 to 54?

A Yes.

Q And the next category up from that is what, Doctor?

A 55 to 69.

Q 55 to 69.

A Yes.

Q And the mildly retarded are in the category from, at least according to the IQ classification, from 69 to 84 did you indicate?

A This group would be considered borderline. It would constitute the fifth category.

Q I see. From 69 to 84, is that correct?

A From 70 to 84, -

Q From --

A -- constitutes the upper category known as borderline. These are commonly referred to in the schools as the slow learners.

Q I see.

Now, from 84 to 100, in terms of IQ classification, is it fair to say that those children are not considered to be retarded?

A Well, they certainly are not included in this categorization. They would be academically retarded and may be socially maladjusted, but are considered to be close enough to the norm probably to adapt.

Q I see. Now, Doctor, we have brought up the terms, in this court room, the educable mentally retarded; are you familiar with that term, Doctor?

A Yes, sir.

Q Would you kindly define it for us, please?

A The educable mental retardate is capable of profiting from special instructional programs and services to the degree that he can become a functioning effective citizen in the social and work world.

Q Now, Doctor, does the educable mentally retarded have any IQ classification which is at least an indicator that such a person may fall into that category?

A Yes, sir.

Q And would you indicate what that is, please?

A This would be, in the present definition, that group from 55 IQ to 69 IQ.

Q I see. So, the educable mentally retarded, at least in terms of IQ classification, correlate to the moderately retarded?

A No, to the mild.

Q To the mild retarded.

A Yes.

Q Now, Doctor, in terms of the District of Columbia public school system, are you familiar with what activities are in that school system that relate to the profoundly mentally retarded?

A Well, by activities, do you mean plans or operations?

Q Yes, plans, operations, remedial programs and the rest.

A The District of Columbia in 1954 or 1955, I can't be exactly correct on this, without consulting my own notes, initiated its first program for the severely retarded at the Military Road School, and that has been a continual, a program in continual operation until and including today.

Last year there was a great impact in this program because of the availability of both space and funds, and the program has grown rather phenomenally over this ten to twelve year period.

Q I see. Now, Doctor, I know I asked you about the profoundly mentally retarded and you responded --

A I am sorry.

Q -- for clarification on the record, and you responded about the severely mentally retarded.

A Yes, I am sorry. I think of public school programs and trainables, you see. I am victimized, like many of us, by the pedigrass and the terminology and assume too much.

Q Not at all. But just so that the record is clear, we are talking about the trainables, so-called severely mentally retarded children.

A Yes.

Q Now, Doctor, do you have any idea how many children are so treated by the District of Columbia within their public school system, say as of today or as of most recently?

A I know that 43 classes have been approved and most of these classes would consist of 7 to 10 pupils, so that would give you a rough approximation.

Q And, Doctor, are you aware of the type of teacher who is teaching these severely mentally retarded children within the public school system?

A Yes, sir, I am.

Q I see.

A I know of a good many of these teachers.

Q I see. Are you familiar with the qualifications that they have?

A Reasonably so, yes.

Q I see.

And, Doctor, what qualifications are required of such teachers by the public school system in the District of Columbia?

A To my knowledge?

Q Yes.

A They are required to earn six credits of study beyond the normal teacher preparation. This is the requirement to be a specialist.

Q A specialist?

A That's right. A teacher in special education.

Q Now, did you indicate that there were 45 classes--

A 43 classes.

Q 43 classes.

A Yes.

Q Of 7 to 10 pupils per class?

A That would be about the average.

Q Now, Doctor, in terms of the severely mentally retarded child and the programs that are afforded that child in the public school system, do you have an opinion as to where the District of Columbia stands in relation to other systems that attempt to treat the same problem?

A In this particular area of exceptionality, the District effort compares very favorably with the efforts of most large cities.

Q Doctor, does a severely mentally retarded child require a special educational experience?

A Yes, indeed, highly special.

Q I see. Highly special.

A Yes.

Q Doctor, does a moderately retarded child require a special educational experience?

A Yes.

Q Doctor, does a mildly retarded child require a special educational experience?

A Yes.

Q Doctor, would you kindly outline the reasons that - pardon me - the factors that contribute to mental retardation, as you know them?

A Your concern is here for the causes of retardation?

Q Yes.

A Physiological, biological, genetic, cultural, social, emotional.

Q Doctor, would it be a fair statement to say that the children who are mentally retarded in any of the degrees that we have been talking about may be so in part because of an experience that they have had outside the school, the formal school system?

A Well, I think that if you take into account the definitive definition which you have in this six page report, I think it would be impossible to say that this could not be a factor.

Q I see.

A But I would hate to put a value on the significance of this.

Q Yes, I wasn't consulting your opinion for that.



Doctor, in your experience, are you familiar with the procedure by which children are placed in the special academic curriculum within the District of Columbia, so-called basic curriculum?

A I am generally familiar, yes.

Q And, Doctor, do you know that, in terms of such a placement, parental consent is required?

A Yes, I understood from Dr. Hansen's testimony that this is a requirement now.

Q And, Doctor, are you familiar with the fact that a psychological evaluation is made by either a clinical psychologist or a school psychologist within the District of Columbia school system before a child is so placed?

A Yes.

Q Doctor, in your opinion, with respect to a professional and at least accurate as possible determination of whether a child requires special education, is it not a fact that a psychologist should make an evaluation of such a child before a placement in a special educational curriculum is made?

A Well, are you asking is it a fact that this should be a part of diagnosis, or, what is my opinion?

Q I am asking you for your opinion.

A Certainly I think this is a very necessary part of placement procedure.

Q Now, Doctor, in terms of educating a child in special education, is it not a requirement that, in your opinion, would it not be helpful if the teacher were specially prepared for such education?

A I think the teacher in this case is the most vital ingredient.

Q And, Doctor, are you familiar generally with the availability of teachers in special education across the country?

A Enough to make a flat statement about whether they are hard to recruit,--

Q Yes.

A -- is this what you are angling for?

Q Yes.

A Yes, I am generally familiar.

Q And is it not a fact that across the country, Doctor, that such teachers are difficult to recruit?

A Yes, sir.

Q Doctor, would it be fair to say that teachers trained for special educational purposes are not abundant enough to meet the national need for such teachers?

A I would certainly agree with this.

Q Just generally. And you may consult any document that you have with you if it will help you to answer.

A It is even difficult to generalize on this, because we have involved many areas of exceptionality.

Q I see.

A And there are many grades and degrees of attention in the guidelines to services, programs, etc.

Q I see.

A I would be happy if you could build down --

Q My question may have been too general, Doctor, but I do want to elicit this from you, if I may: In the field of exceptionality do teachers require special training for the particular type of exceptionality in children that they may encounter?

A Yes, sir. And those requirements are quite specific for the fields involved.

Q I see. Now in the field of exceptionality we are talking about not only the mentally retarded and the degrees that we talked about, but are we not also talking about children who may be emotionally disturbed, as being exceptional children?

A Oh, yes.

Q Children who may be severely physically handicapped, in terms of sight and hearing, would they be

called exceptional children?

A Yes, sir.

Q And so you are telling us that in order for a teacher to meet these specific kinds of exceptionality, there is a specific -- there are specific requirements that such a teacher ought to meet; according to the Council for Exceptional Children, is that right?

A That's right. I wonder if I may make a statement here that might clarify this?

Q By all means, Doctor.

A A bit ago I believe you asked me what the requirement was for a teacher to be able to assume responsibility for a class of severely retarded here in the District. And I gave you the District requirement of six earned credits beyond ordinary teacher preparation.

Q Yes.

A Now, the Council for Exceptional Children, as a professional body, is seeking to make it mandatory really that every teacher who assumes responsibility for retarded children meets at least a minimum standard of professional preparation and competency.

Q Yes.

A And it is in this connection that this document was presented to the body in Toronto this year, in April of

this year, and it is on this adoption of the guidelines that the profession will try out, in its several regions and local jurisdictions, the workability of what have been adopted as minimal standards.

Q I see, Doctor, thank you.

And are these guidelines, if they work out, meant to be applied nationally?

A I think the general intent is that, yes.

Q Doctor, I am going to read a quote from the transcript of the proceedings in this case relating to an answer that you gave in response to a question from counsel and it appears on page 908 of the transcript, and I am reading your answer now:

"Some information has come to me as part of my direct experience with the schools, both as a member of the Working Party on Education, as a Howard professor, and as a member of the Center for Youth and Community Studies.

"I think I should probably make very clear I have been not simply a critic of the basic track, but that I have tried to make a contribution to correcting some of what I see as ineffective operation being aware of the overwhelming difficulties that this urban community faces."

A Yes.

Q Doctor, is that the answer that you gave?

A Yes, it is.

Q Now, would you kindly tell me what you mean by "the overwhelming difficulties that this urban community faces"?

A Well, in a very general way, the meeting of needs of teachers in service type training to meet the needs of their students, the overwhelming proportions of youngsters with learning problems, the difficulty of retaining, recruiting and even rewarding teachers who give service to such children, space limitations, the things which block effective programming.

Q Doctor, you have indicated that the teacher, in your view, is the most important single factor in aiding a child who needs special education. Is that a correct statement?

A In the context of the school, yes.

Q Yes. Doctor, would it be fair to say that the dedication or enthusiasm a teacher brought to that task would also be a very important factor in terms of whether or not a child who needed special education would be aided by such teacher?

A Well, maybe you can help me here. If I had some qualification on your word "dedication" and "enthusiasm" -- I

would like, for instance, to know, do you mean a qualified teacher who is enthusiastic and dedicated, or do you mean a teacher with no particular training who is sensitive and perceptive and does dedicate her efforts?

Q Well, Doctor, let's address ourselves to the first category that you described, first, that is, a qualified teacher in this area, who brings to the task a special energy and dedication to the job, would your answer be yes?

A Yes, I think they can make a significant contribution.

Q Now, Doctor, in terms of a teacher who is not specially trained to educate children who require special education, would you say that the energy and dedication of that teacher to this task would be a helpful factor in terms of aiding the child within the school context?

A I would like to give you a qualified answer.

Q You may give any answer you wish.

A It can be helpful and it can be exceedingly harmful.

Q Depending on what, Doctor?

A Depending on the insight the teacher has, the skill she uses, the kind of direction and supervision she is giving; in short, I am trying to say that there are some very promising teachers not presently qualified, who, with

proper supervision and with some opportunity to get more information and to practice more skills, could be quite effective.

I have been impressed, and ~~very favorably~~ impressed, with some of what I know goes on in some of these classrooms.

Q Doctor, did you have occasion at all to give a course to District of Columbia teachers in the area of special education?

A Yes, I did. In my testimony the other day I reported that when I affiliated with Howard University I contacted Mrs. Rosa Jones, the Director of Special Education, and offered my services to her and to the teachers.

She had, just about at that time, had both funds and space made available for classes of severely retarded students, and of necessity, because of the recruitment problem, had to place in charge of some of these classes teachers who did not have academic preparation or experiential preparation.

Q Doctor, did she respond to your invitation to teach such teachers in this area?

A Yes, she did.

Q And, Doctor, how long was the course that you gave in this area?

A I met with teachers once weekly from early



October until the end of May, except for holiday periods.

Q I see.

A We met after school. It was a voluntary program, and we averaged about 20 per session.

Q I see.

Now, Doctor, in connection with the quotation I just read to you, the quotation contained the language that you were a critic of the track system.

Now, will you kindly tell me when you first became a critic of the track system?

A I think I used that term because it was obvious that my published testimony in the Pucinski report would probably come to the attention of this group. I did voluntarily appear at the public hearings on the basic track in February, 1965.

Q And was that the first time you became a critic of the track system, Doctor?

MR. KUNSTLER: Your Honor, I would just like to object here to one phrase; the statement that Mr. Cashman is referring to, on page 908, says "a critic of the basic track."

MR. CASHMAN: I am sorry, Your Honor, I did not mean to misquote.

BY MR. CASHMAN:

Q Now, Doctor, would it more fair to say that you

are a critic of the basic track?

A Yes, and probably I should further qualify, special education programs .

Q I see. Now, Doctor, in terms of your criticism of the basic track, is not your criticism largely based on the feeling that you have that children are,--that some children in the basic track should not be there?

A I would rather say that my criticism is based on factors that any special education teacher would insist upon, and that is differential diagnosis as a requirement for admission and continual evaluation of performance as a requirement of admission.

Q Now, Doctor, would you kindly tell us what you mean by differential diagnosis?

A Differential diagnosis in the sense that in using it would mean that the intelligence test would be only one factor and possibly not even a decisive factor in such placement, that there would be a physical examination, that there would be social case work-up, that there would be a team of specialists who would decide what kind of programming this child would need in educational ways to profit from the school experience.

Q Doctor, do you know what person or persons are

responsible today for the location of the child in the basic track in the District of Columbia school system?

A I believe it is the function of the Department of Pupil Services.

Q Doctor, do you know whether or not the individual teacher of a child so placed has any voice in that placement?

A As far as I know, yes.

Q Now, Doctor, within the District public school system do you know whether or not a principal or assistant principal has any voice in placing a child in the basic track in the District of Columbia public school system?

A I know that the decision, the actual decision on admissibility to this placement is not the prerogative of the teacher or principal but must be the prerogative of the Department of Special Services, or Pupil Services, but I think that all of these people do contribute to that decision.

Q Now, Doctor, so we will be absolutely clear, are you saying that as far as you know it is the function of the pupil personnel service to recommend whether or not a child should or should not go into the basic track in the District system?

A This is my understanding.

Q I see. Now, Doctor, you will concede, will you not, as you have in your prior testimony, that the parent of

the child, the parent of a child so placed is also consulted and the parent's permission is sought, before a child is so placed, in the District system?

A Yes.

Q Now, Doctor, will you tell me what you meant by a continuing evaluation of a child who is placed in a special academic educational setting?

A By definition, mental retardation is not a static state. The definition we are using is a dynamic definition, and it refers to the current status of a child.

Q Yes, Doctor.

A And retardates do move up or down or sideways or they do make adaptation to and respond to or they may fail to adapt or respond to instructional and supportive services.

So I think the gist of what I am trying to communicate is that without a continuous evaluation what can be labeled as status one day may be completely invalid one year later or two years later or even a week later.

Q Now, Doctor, who would make, in a public school system, the continuous evaluation that you are talking about, what person or persons?

A As I would like to see it practised, and I have seen it in practice, this is a team effort, no one person

never, but I would certainly guard against classification based on one criterion.

Q I see. Would you tell the Court what other criteria you would consider before you would place a child in the category of severely mentally retarded other than the IQ result?

A In a general way, I would hold very much with what is the dynamic definition of retardation, and I would seek interdisciplinary accord on a differential diagnosis based on all kinds of examinations and data accumulative both from parents, child, school, physicians, consultants, eye and ear specialists, etcetera.

Q I see. In order to be a professional, then, it would have to include many more criteria than merely an IQ result, isn't that so, Doctor?

A Yes. And further I would say that I would require much more than a group test result, and group test results do stand on this document.

Q Doctor, then is it not fair to say that from this profile we could not tell who was severely mentally retarded, on this document alone?

A On that document alone, certainly not.

Q Doctor, in the field of mental retardation, has not the public concern for that field accelerated in the most

recent past?

A Public interest and public support of programs have certainly spiraled since the impact of President Kennedy's interest in retardation.

Q And, Doctor, in the field, has that public concern been an aid to the professional in terms of combatting this problem?

A I would like to qualify my answer on this.

Q However you may.

A It has certainly had its effect in many, many disciplines, and probably most particularly in education. The impact of effect shows itself in the District program, I think, and it may well be that it was because of parental and public concern that there was such phenomenal growth in the program for the severely retarded.

Now for the parents and teachers concerned with the educable retarded, who make up a much higher percentage of retardates, this may also create negative boomerang effects. In short, in this city and in others across the country, there is unequal interest among the classifications of retarded; and in some areas and jurisdictions, particularly where legislation is not mandatory, we find some programs getting more moneys, more support, more personnel, than other programs.

Q I see. Doctor, you are referring to parental concern as well as other concern, are you not?

A I am talking about, really, the total impact of public and professional interest in the field. You see teachers that are beginning to make their voices heard, too.

Q Doctor, in terms of special education programs that are offered in colleges here, and by here I mean in our immediate vicinity, does the D. C. Teachers College offer such a program?

A To my knowledge, they have undergraduate offerings, but I believe these are restricted to the secondary age population.

Q I see. Now--

THE COURT: What do you mean by that, Doctor, secondary age population?

THE WITNESS: This would be junior high school and high school age youngsters.

BY MR. CASHMAN:

Q Now, Doctor, do you know whether or not the University of Maryland offers a course in special education?

A A sequence of courses.

Q A sequence of courses?

A Yes.



Q And is this in both the elementary and secondary levels?

A Oh, yes, and in several different areas of handicapped, too.

Q And when did the University of Maryland inaugurate their program?

A '55 -- no -- '56. The program was started in Maryland as a result of importing a group of professionals got together and insisted on training for the jobs that they were held responsible for. And Montgomery County, Maryland, took a lead here and rounded up funds and imported the Syracuse University staff to come to Montgomery County, and this was in fact a demonstration to the University of Maryland that they could no longer say we have laws requiring that every child be educated without making teacher preparation efforts.

So that program, I think, started in '55 or '56.

Q I see. Now, do you know whether or not Georgetown University offers a sequence of courses in special education?

A Georgetown University is a liberal arts college and does not have a department of education as such. They do have an affiliation with the consortium of graduate schools representing five local universities; and because they do operate and have services for children in diagnostic and



supportive services, all members of the consortium are participating with Georgetown University in field and practical experiences.

Q Now, Doctor, within this consortium, what other colleges participate other than Maryland and other than Georgetown University, and we have mentioned D. C. Teachers?

A Maryland is not a part of the consortium nor is D. C. Teachers College. This is a graduate school consortium limited to the Metropolitan Area.

Q I see. Well, then, to identify specific schools, could you tell me if George Washington University offers a sequence of courses in special education?

A George Washington University, American University, Catholic University, Howard University. I thought there were five. Georgetown University is a part of the consortium. So that makes the fifth university, but with no department of education.

Q I see, Doctor. And when did Howard University inaugurate its sequence of courses in this area?

A Well, this is a little difficult to answer. If you will ask when did Howard begin to offer courses in special education, I could give a date way back when.

Q Yes. No, I am referring--

A Or a regular sequence of teacher preparation for.

Q That is what I am referring to.

A This was initiated in February of '64.

Q And would you indicate kindly, Doctor, when American University inaugurated a sequence of courses in the area of special education?

A I cannot testify to that with any certainty at all.

Q I see. Doctor, do you have any information with respect to George Washington University when it inaugurated its program with respect to a sequence of courses in special education?

A I can answer that. I do know that they hired a full time special education director just last year.

Q I see. Doctor, are you aware of any efforts that were made by officials in the District of Columbia public school system to these colleges that we have just talked about to begin a sequence of courses in special education?

A I know of no such effort, but that does not obviate it. It may very well be.

MR. CASHMAN: Your Honor, may I have a moment with counsel, please?

THE COURT: Very well.

MR. CASHMAN: I have no further questions, Your

Honor.

MR. KUNTZER: I will rephrase the question.

BY MR. KUNTZER:

Q Are you familiar from your experience with what we call a crash program being instituted with reference to the testing of children in the basic track within the recent past?

A Yes. As a matter of fact, the listing and the test results that I have just reviewed were reported after the total group of youngsters placed in the basic track had by Mrs. Strauss's report been markedly reduced because of the retesting and evaluation program.

THE COURT: When did this take place according to your information?

THE WITNESS: When did what take place?

THE COURT: The retesting.

THE WITNESS: The retesting had at least been reported and acted upon, implemented after Dr. Davidson made her visit in December.

THE COURT: Of what year?

THE WITNESS: Of '65. And before our committee got the report to consider it at all, Mrs. Strauss reported, I think, something like an almost fifty percent reduction in the number of youngsters in the basic track. There was not only a crash testing program but some of the criteria for

admissibility to that program were changed.

BY MR. KUSTLER:

Q Now, Dr. Justison--

THE COURT: Wait just a moment. Can you put a date on these changes?

THE WITNESS: I can't put an exact date on it, I am sorry, Your Honor, but I think there was much publicity about this at the time. And I think it is to Dr. Hansen's credit that he had a good look see at what was going on, because it was reported to him in pretty emphatic terms by the citizenry that some youngsters were placed without benefit of diagnostic evaluation. And I think he has never posed the program as being perfect, and I think he mobilized his own department to do something about it, and I think it is very much to his credit that he did this.

Many children were reassigned to a much more tolerable educational environment as a result of this. This is my considered judgment.

BY MR. KUSTLER:

Q Dr. Justison, do you think this program took place in 1965 if you can't place it any more directly than that?

A Yes, I think so.

Q Now, Dr. Justison, in questioning you about the fact that there was an apparent shortage of special teachers

across the country, Mr. Cashman went into that, if you recall, to some degree?

A Yes.

Q Is it your professional opinion that because of such a shortage that standards for the teaching of special education should be drastically reduced?

A No, sir.

Q Do you consider the standard of six credits which is now required by the District of Columbia schools to be enough for the training of a special teacher according to your professional standards?

A According to my notion of proper teacher preparation in a field which is in very great flux, in a field which is really interdisciplinary in character, I think that two three credit courses would be a standard so minimal as to be almost ridiculous in this day and age.

Q Is it below the standard of the Council for Exceptional Children that counsel referred to, the standard that was adopted at Toronto?

A It is.

MR. CASHMAN: Your Honor, I believe the witness has testified that the Council for Exceptional Children has made certain guidelines and certain recommendations.

I believe there was distinct testimony that these have not been adopted, but are merely recommendations that have been referred and are being considered.

So I think that counsel's statement that they have been adopted is a misstatement of the witness' testimony.

THE COURT: Well, has Mr. Cashman states accurately your testimony, Doctor?

THE WITNESS: I think he has stated accurately the testimony that I gave to the guidelines of the Council for Exceptional Children, but I think there are State standards in existence that have been in existence for many, many years which would probably cover the question.

MR. KUNSTLER: All right, Your Honor, I will rephrase the question.

BY MR. KUNSTLER:

Q Dr. Justison, referring to the guidelines that came out of the Toronto Conference.

A Yes.

Q Whether they have been adopted up to now or not, is the six credits required by the District of Columbia special teachers below the minimal standards of these guidelines?

A Well below.

Q Just one question about Mrs. Rosa Jones who, according to your testimony, has now retired but was formerly Director of Special Education.

A Yes.

Q Mrs. Jones is a negro, is that correct?

A Yes, that is correct.

Q Now, Dr. Justison, with reference to the education of the children that we have classified as children requiring special education on the lower end of the spectrum, not the gifted children, would the phrase "subnormal children" also define this category?

A This is a term that is popularly used, yes.

Q And it is the same definition more or less that you gave for mentally retarded children?

A Yes.

Q Now, Dr. Justison, in discussing the question of

teachers, or the availability of teachers for special classes, I believe that it was your testimony that they are difficult to recruit -- that is to say, teachers that I have just defined?

A Yes. This is a national problem.

Q And I want to ask you whether this is a recommendation in the report of Survey of the Schools of The District of Columbia submitted by George Strayer who was Director of the survey on February the 28th, 1949, and this is contained in the document "Review of the Recommendations" of this report which was submitted to us this morning by defense counsel which would meet with your approval and I am referring to page number 36 recommendation number 16 which reads as follows: "That is the teachers of classes for subnormals are asked and required, before they can be employed to have special training for the work, they be given extra remuneration for the work and placed on a different salary scale.

This is the acceptable policy for such teachers in most cities of the United States today."

MR. CASHMAN: May I object to that, counsel. Your Honor, I do not believe that the Strayer report has been ruled upon by this Court as being in evidence and Your Honor can



correct me, of course, if I am wrong --

THE COURT: I think that is right.

MR. CASHMAN: So I think, Your Honor, this witness ought not to be examined with respect to the Strayer report by virtue of all of the objections that the defense has made in connection with its admissibility -- the fact that it was merely a recommendation, the fact that it is 1949 which is quite out of date chronologically in relation to the developments in this case and for all of those reasons and in view of the objections made initially to its admissibility, we object to this witness being examined with respect to it.

THE COURT: Well, I think that counsel could rephrase his question leaving out the Strayer report.

In other words, you could ask whether or not this is a proper qualification for such teachers.

MR. KUNSTLER: All right, Your Honor. I will rephrase the question.

BY MR. KUNSTLER:

Q Doctor, would it be your opinion that in order to recruit more special teachers in the field that you have been discussing that it would be recommended that they be placed

under a different salary scale than other teachers and given extra remuneration for the taking of further study courses?

MR. CASHMAN: Your Honor, at this point I have one further objection and that is this: What we are dealing with now is the minutiae of school administration and I do not think is a proper subject of review for a Court of law, as to whether or not the school administration will decide to put teachers on a higher rate of pay for whatever activities they may be engaged in.

I think this is outside the scope of legitimate judicial inquiry.

THE COURT: Well, that may be, but we have been dealing with minutiae all morning, it seems to me, to some extent at least, so I will overrule the objection.

MR. KUNSTLER: Does Your Honor want me to rephrase the question?

THE COURT: Well, do you understand what he is talking about, Doctor?

THE WITNESS: Yes.

THE COURT: Could you answer the question, then.

THE WITNESS: It is my personal opinion that salary

schedule differences merely create more difficulties, more competition for assignment and do not necessarily effectively create effort.

BY MR. KUNSTLER:

Q I see --

A I guess I have enough faith in my colleagues as a professional body to feel that their human interest and concern is probably the best recruitment ingredient.

Q Now, Dr. Justison, you have we think, in the course of your cross-examination or, let me put it this way: Is it your professional opinion that there ought to be continuing re-evaluation of pupils in the Washington, D. C. school system who are placed in the basic track in terms of your definition as to dynamic status for mental retardates?

A Yes.

Q Do you believe that there should be a continuing review?

A Yes, indeed. I feel there is great need for such continuing review.

Q And what would be the nature of some of the aspects of that review. What would you do for a person in the basic

track?

A Again, I would get a systematic review and evaluate the changes, I would have a periodic reassessment of physical status and sensory status -- that is, vision and hearing, et cetera, because with development some of these things are quite phenomenal.

I would again make such re-evaluation in team effort in which the teachers, the principals, the counsellors, all take part, psychologists and consultants if necessary, and come to a common decision on the needs for individual children.

Q Would that include regular retesting concepts, say the Stanford-Binet Test or other psychological measures of IQ?

A Yes, indeed. Yes, indeed.

Q Would you consider such frequency of re-evaluation, or would you tell us what you consider the standard of frequency of such re-evaluation to be for the giving of such psychological tests as Stanford-Binet, or any of the other recognized ones -- would it be once in five years, or once in six years. Do you feel that that would meet your standard?

A No, indeed.

simply going into these matters preliminarily, the Court is going to allow him some latitude preliminarily. With that, statement, the Court will overrule the objection.

MR. EARNEST: Thank you, Your Honor.

THE WITNESS: I think my son was in the regular  
track.

BY MR. EARNEST:

Q If he were in the regular college preparatory, would that be something that wouldn't shock you? Would you know that, sir?

MR. KUNTILER: I object to the phrasing of that question.

THE COURT: Well, the witness has said he was, his son was in the "regular" track. If you have something that would refresh his recollection to indicate otherwise, I think you ought to show it to him.

BY MR. EARNEST:

Q That is what I was trying to do by saying "regular college preparatory" because I believe that is what he was in.

A Yes, I said "regular" track.

Q That is the "regular college preparatory?"

A Yes.

Q Do you know about where he graduated in his class?

A I don't know.

Q You think it would be in the upper 20 per cent?

A Let's put it this way. He graduated high enough to go to college. I don't know what per cent it was.

Q Let's proceed to your testimony involving your daughter, Jean.

I believe you said that she had been enrolled in public school in the District of Columbia?

A That is correct.

Q Now, in the complaint, one of the allegations is that you make appears in paragraph 1(b) and in that paragraph which appears on page 2 of the complaint, you say "in addition the plaintiff, Julius W. Hobson, has been compelled for some or all of the reasons herein after set forth to remove his infant daughter, Jean Marie, Hobson, from the Amidon Elementary School, a public school under the supervision and control of the defendants and enroll her at great cost and inconvenience in a private school."

Now, concerning that allegation, I would like to ask you first of all if before being enrolled at Amidon, your daughter had not been previously thereto enrolled at Bunker Hill?

A Right.

Q When she became enrolled at Amidon, that was at the request of Mrs. Hobson and yourself, was it not?

A Right.

Q And that would have been during the summer preceding her enrollment as a second grade elementary school pupil, would it not? In other words, her second year commenced at Amidon, didn't it?

A I am not sure whether it was second or third year. One or the other.

Q All right, sir.

After she was enrolled at Amidon, she was promoted to the third grade, wasn't she, sir?

A I assume so. She never failed.

Q Don't you know, Mr. Hobson?

A She never failed so I assume she went to third.

Q So you know as a fact your daughter went to school as a third-grader at Amidon?

A Right.

Q During the academic or school year for her third year, while she was a third year student at Amidon, there did come a time, when she was put back in the second grade; isn't that true, sir?

A I don't know if she was put back in the second grade,

but there came a time when she was put in a particular grade with children almost twice her age in what was called, basic track. I didn't worry about what grade it was. That is when I took her out of Amidon.

Q I will ask the question again: Didn't there come a time during the year that your daughter, Jean, was in the third grade at which time at your request or your and Mrs. Hobson's request your daughter was put back from the third to the second grade?

A I made, my wife may have made such request.

Q Would you answer that question?

A Yes, I am going to answer.

MR. KUNSTLER: I'd like to object at this point. I think counsel was getting off into what was discussed at our discussion a few moments ago. This witness went on the stand for one purpose, to discuss particular material. We identified him as having two children, and he indicated he had taken his child out of the public school system for certain reasons. I think we are getting into an area here which is within your Honor's order. I don't know where it is going or what the intent of it is but it certainly is not the heart of this witness's direct testimony and I would like to interpose an objection to it.



THE COURT: I think this matter was opened up in direct and I overrule the objection.

There is only one question: Do you know whether or not your daughter was put back from the third to the second grade? Is that the question?

MR. EARNEST: That is the pending question.

THE COURT: Do you know whether or not this is the fact?

THE WITNESS: Your Honor, I am not sure whether she was put back. I know she was put back out of the third grade. I don't think it was the second grade. I think it was some kind of basic third grade track which was really equivalent to second grade, which children who had difficulties of all kinds were put in. Now, it might have been in the second grade. I am not sure.

THE COURT: Thank you.

BY MR. EARNEST:

Q Mr. Hobson, in order to refresh your memory, we will go back to around the 5th of March of 1965. Now, this was at a time when your daughter was still enrolled in the public schools of the District of Columbia?

A I guess it is if the record shows it.

Q And sometime thereafter, namely during the summer of 1965, you enrolled your daughter at Glaydin School, isn't that right, sir?

A Right.

Q Before she was removed from public school and prior to your enrolling her in Glaydin School, is it not a fact that the principal of Amidon School addressed a letter to you in which he pointed out exactly what I have asked you, namely, that your daughter at your request and Mrs. Hobson's was being brought back from the third to the second grade where she would be better suited to do the work which she was undertaking and not doing well as a third grader?

A Well, if you have such a letter let me see it and I will confirm ~~and~~ deny it. I don't go around remembering such letters.

Q I will hand you that and ask you if you can identify it, for us.

A This does seem to be a letter signed by Mrs. Miller, and I would assume it is correct. I cannot remember.

Q Does it help refresh your memory as to whether you ever received the original of it, Mr. Hobson? It is addressed to you.

A I am sure -- let me say this in this particular matter maybe my wife received it. I will stipulate that we received it.

Q Thereafter, you did as we have just discussed, I believe, enroll your daughter, Jean Marie, in the Glaydin School?

A Right.

Q Will you tell us where the Glaydin School is?

A Glaydin is located in Leesburg, Virginia, about 55 miles from Washington, D. C.

Q That is a private school, I believe you said?

A That is a private school, right.

Q Do you know what the enrollment at Glaydin School is?

A Maybe 250 school children, maybe a few more.

Q Suppose I said that it might consist of a total enrollment of 45. Would that be more nearly correct?

A No. I think it would be closer to -- I don't know what the total enrollment is at Glaydin.

Q It is a co-educational school, isn't it?

A Right.

Q With a strong emphasis on remedial reading and that sort of thing?

A I don't ~~know~~ what it has a strong emphasis on.

Q Did you, in fact, do any of the inquiring about the school before you enrolled your daughter there?

A Oh yes, we inquired about it. What kind of school it was and so forth.

Q Do you know how large of a staff is at Glaydin School?

A No, I don't.

Q Do you know what the curriculum offered at Glaydin School consists of?

A Not entirely. No.

Q Tell me as much as you do know, if you know?

A I do know ---

MR. KUNSTLER: I sat there, Your Honor -- Is this relevant for the inquiry? He testified that he transferred his daughter to Glaydin, that she is doing well at Glaydin. I really don't see where the inquiry is going.

MR. EARNEST: First of all, I would rather rely on this record. He didn't say she was doing well at Glaydin either. I am not here for the purpose of quibbling. He opened this up. There is an allegation in this complaint. One of the contentions is that the school system we have is one that Mr. Hobson said he was compelled to remove his daughter from. He testified about it. He swore to the complaint about it. He talked about the monetary cost incurred in this and he said it was all because we didn't do certain things, and after having done this I think I am entitled to ask him a few questions about it.

What do you want to show by this? There may be a good reason but it is not obvious.

MR. EARNEST: The reason I am going into it is I want to get a contrast. We have plenty of criticism. What we have here: I want to know what a parent who is compelled to leave here and go elsewhere explains by way of the precaution. In other words, he must be getting what he says we failed to give him.

THE COURT: I will overrule the objection. But I wish you would get more to the point of this case. But go right ahead.

MR. EARNEST: Thank you, Your Honor.

BY MR. EARNEST:

Q So, Mr. Hobson, my question is: I don't believe I had a pending question to be frank about it. I will start with a new one. When you enrolled your daughter in the Glaydin School, I believe you said that you did do part of the inquiring which preceded the enrollment?

A Right.

Q So that you found out and you discussed with the Glaydin School Officials what your problem was as a parent, or what your problem and Mrs. Hobson's was with respect to Jean Marie, did you not?

A Right.

Q Did you correlate that to any one deficiency in our system or did you correlate it to any -- you say you were "compelled" to remove her and I'd like to know why.

A All right, I will tell you why. In the first place, you have a letter there to the effect that we had the consent. I will stipulate that letter is correct. They had the consent of the parents to move Jean back and they did. There was nothing wrong about that. We later found out. The reason she was removed from the public schools was she had been moved back into a class where there were children who were much older than she was with all kinds of problems; some were hyperkinetic -- that is couldn't sit still; some were academically slow; and with children that couldn't keep up. In fact, when she was in the class we had some difficulties with some of the older boys calling her. I personally went to school to see the principal about a little boy quite a bit older than Jean. So, we felt her being in this situation no matter what grade -- That is why I was more concerned with that than I was the grade -- That is why I couldn't remember -- (continuing) That is why we felt she should be removed. So we removed her and put her in Glaydin School.

Q I will ask you about Glaydin School. Isn't that co-educational?

A They have girls and boys.

Q The age of enrollment is from 6 to 15, isn't it?

A I don't know the age of enrollment.

Q But this is a school. Our school you took her out of and this is the school you selected to take care of the deficiency in our system.

A Indeed.

Q You don't at this time know what courses she is taking, what curriculum is offered, or any of the other details that I have asked you except what is stated in this record?

A I don't know --

MR. KUNSTLER: I was going to make an objection. I think he has phrased as facts things he hasn't even asked the witness, and put them in this one omnibus question. I object to the question.

THE COURT: Rephrase your question.

MR. EARNEST: I will agree that was a conglomerate question. I will ask it this way:

BY MR. EARNEST:

Q Mr. Hobson, can you otherwise describe the curriculum offered at Glaydin?

A I am not going to attempt to describe the

curriculum. I am going to tell you what my daughter is taking. She is taking reading, writing, arithmetic, social studies, a little science which is at her grade level. She has certain social studies, and she is taking a very extensive course in recreation, horseback riding and so forth, swimming, and things like that. I don't know the curriculum of the school.

I understand it varies from class to class and it even varies within the class. All the children in the same class don't take the same thing. It is a school which is graded and yet which is not graded. They take the children and put them in situations where they learn better.

My daughter is in one class in which she is taking reading with one group; in another class taking science with another group; and she may be still in another class in which she is taking geography with another group. I couldn't say what the curriculum is, what they offer, one, two, three, four, five, with each grade in the class; and I don't see that would be any concern of mine as a parent. I am just concerned with what they are offering her and whether or not she is advancing and able to absorb it and get along under that particular system, and I am satisfied that she is.

Q One further question: That is from your understanding of the type of school operation conducted at Glaydin,



since she is not in a fixed grade, do you understand that the ages of these school children varies?

A Let me say that they don't take any -- my daughter is nine years old. They don't take a nine-year old child and put it in a class with a 15-year old child. If I gave you that impression I didn't mean to give that impression. They change them around and put them in learning situations depending on the slowness or speed or pace of the class. I am sure there may be some variations in age. There may be a 10-year old child in that, but generally as we understood it from the school people they keep them generally age-grouped together. All the little girls and little boys of a particular age range are kept together. That may vary about two years, I don't know.

Q I just wanted that for clarification. Do you know the name of the head of the school? The principal or superintendent?

A It escapes me at this point.

Q And I believe you said the tuition is \$1600 a year?  
or \$1700? \$1600 or \$1700.

Q Now, Mr. Hobson, going back to your testimony on direct as it related to your interest in civic affairs and the development of your interest in the school system of the District, I believe you started back with your activity as a

THE COURT: I think we are clear about it. They are biased to make this point so why don't we proceed from there.

MR. EARNEST: Yes, I think he did a very credible job in picking the schools he wanted.

THE COURT: Well, I think he admits that.

MR. EARNEST: Well, then, would you indulge me for one moment, Your Honor?

BY MR. EARNEST:

Q If we can locate your chart, Mr. Hobson, and for the record this chart has been offered by the plaintiff and is their Exhibit No. V-7, I would like to ask you, Mr. Hobson, what that chart is supposed to demonstrate for us and if you will read the caption on it into the record, please?

A That is the District of Columbia public schools per cent of elementary schools ranked above and below the median per capita cost by race, 1964 to 1965.

That chart -- if you want me to tell you what it is designed to show --

Q Yes. Would you indicate that.

A That chart is designed to show that a greater proportion, 84 per cent of the white elementary schools, of the

predominantly white elementary schools in the District of Columbia, receive expenditures per pupil above the median of \$295 and that 16 per cent of the white elementary schools in the District of Columbia, predominantly white elementary schools, receive a per capita expenditure below the median.

On the black schools, that chart proposes to show that 56 per cent of the predominantly black schools in the District of Columbia receive expenditures per pupil below the median of \$295 and that 44 per cent of the predominantly black schools in the District of Columbia receive expenditures per pupil above the median of \$295 and that is talking about school year 1964 to 1965.

Q Now, Mr. Hobson, I would like to ask you again if the conclusion that you have just stated for us is also based on the same consideration that applies to your chart on the per capita expenditure indicated by race?

A No, that is not --

Q All right.

A To my knowledge the biased sample, that bar that you see there that is called white schools, is a 100 per cent bar containing all of the white schools which I got from the

there, do think that would be approximately correct?

A I would say it is correct until we look at the records, yes.

Q And then when we proceed to the opposite end of the bar again showing the negro enrollment schools which are below the median, which you show at 56 per cent, if I told you that 62 schools are involved in that figure, do you think that would be approximately correct?

A I will take your word for it until I see the records.

Q All right, then, sir.

Now, then, at the bottom of your chart you show a notation there, or what is called a note "seven of the 10 top ranking schools are predominantly white".

A Yes.

Q What does that mean, sir?

A That means that seven of the ten top ranking schools ranked by expenditure per pupil are predominantly white.

Q All right, sir.

Mr. Hobson, if I said that two of the first four schools in order of per capita expenditure are predominantly negro, would that figure be out of line?

A I don't know.

I would have to look at the records -- I don't know that it is.

Q Well, in reaching your figure of seven out of 10, did you not have to count two out of four?

A I don't know what you mean.

Q Well, I will rephrase it.

A I'd have to count past four to get to seven, if that's what you mean.

Q All right. I will rephrase it. If there is one thing I don't want to do is to confuse a statistician.

In order to put at the bottom of that chart your notation that seven of the 10 top ranking schools are predominantly white, is it not a fact that you had to examine what the top 10 were?

A Yes, of course, yes.

Q If I said to you that two out of the first four are predominantly colored, that would not surprise you too much, would it?

A It wouldn't surprise me. I would have to look at the record.

Q All right, now. Mr. Hobson, if we could go then to

MR. EARNEST: I just have on question, Your Honor.

RECROSS-EXAMINATION

BY MR. EARNEST:

Q Mr. Hobson, in compiling your per pupil expenditure for the elementary schools and so on, and in arriving at the charting that we have in evidence here, did you also give any consideration to the secondary school system, junior high school and senior high school?

A I looked at the data, but I didn't, I don't think I made a chart in that particular area -- I don't think I did.

Q Well, having looked at the data, however, could you give us any idea of what, if anything, if it were charted, that data might show?

A I'd have to --

Q Along the same lines?

A I'd have to take a look at the data and chart it and see. I couldn't say.

Q With reference to Plaintiff's Exhibit which has been identified as F-3, which is called the Per Capita Cost of Secondary Schools Distributed by income levels for the fiscal year 1963 to 1964, which is for the public schools of

the District of Columbia, have you seen that exhibit, sir?

MR. KUNSTLER: Your Honor, I submit that this is improper to raise these records on recross. There has been nothing raised on direct, certainly, with respect to them and it wasn't used on cross-examination, so it was not used on redirect and I think certainly on recross it would be improper.

THE COURT: Well, I will overrule the objection. I think counsel is getting to the end.

MR. EARNEST: Yes, I am, Your Honor, and I had actually overlooked this.

THE COURT: Go ahead.

THE WITNESS: In looking at F-3 you want me to take a look at the high school or junior high school?

BY MR. EARNEST:

Q No, I just asked you if you had ever seen this document?

A Yes.

Q And you said you had studied the data, but that you hadn't charted it, but that you had looked at it and this is data that you looked at?

A Yes.

Q Or part of it?

A Yes.

Q So now I am asking you that if you had charted it, just approximately, what you think you would have found, as to the per pupil expenditure in the junior and senior high schools and would that average have not been very high or very much across the board regardless of where the school is?

A Well, I would have found, if I had looked at this document, that there is not the spread in expenditure per pupil in the junior high school or not as great a gap as there is in the elementary school.

That is what this shows.

I can't say anything about the racial composition of the schools or the income level, because I don't have it charted.

Q Just one question -- I think somewhere in this record there has been testimony that Wilson High School is the only predominantly white high school that we have in the District of Columbia today?

A I believe that is correct.

Q I believe there was some testimony to that effect and



I wondered if from the document that you are holding, if you will take a look at it, and if you would look at Wilson High School, if you could tell us where it ranks in our senior high schools with respect to per pupil expenditure?

A Well, I will read the figures.

Q Well, I really don't want the figures -- there are not that many high schools in the District of Columbia, Mr. Hobson.

A Yes, it is high at \$536 and the low schools around, let me take a look, about \$442, so -- just looking at this quickly.

Q Well, let's not talk about the dollars. Let's talk about the total high schools. Do you see anything reflected on that exhibit that suggests to you that it ranks number seven?

A Well, it has, I see, a seven on here and I don't know what that means, whether it means it is seventh, or what. I just see the figure seven in parenthesis.

Q I beg your pardon, Mr. Hobson. I thought you said that you had studied this data, or at least looked at it, but that you didn't chart it and I just wondered if you could give

me an indication on that basis.

MR. KUNSTLER: Your Honor, I object to this.

THE COURT: Just a minute.

MR. KUNSTLER: I would like to raise the objection that, one, he is going into an area that has not been covered at all and secondly he is now arguing with this witness over data which the witness has asked to look at in order to reach some sort of conclusion to answer the question.

He has not been offered as an expert in the school system. He was merely offered in connection with some charts that were prepared and in connection with which he studied certain data, so I think we are going far afield here.

THE COURT: Well, I will overrule the objection, but let us see if we could not get the question a little clearer, please. Could you clarify it?

MR. EARNEST: I will rephrase the question, Your Honor.

THE COURT: Very well.

BY MR. EARNEST:

Q I would like to ask you, Mr. Hobson, to take a look at what has been offered into evidence as Plaintiff's Exhibit

F-3 -- well, may I have a clarification on this. Is that exhibit in evidence?

THE DEPUTY CLERK: Which one -- F-3?

MR. EARNEST: Yes, F-3.

THE DEPUTY CLERK: Yes, it is.

BY MR. EARNEST:

Q That is offered in evidence in this case, and I would ask you since you have already said that you have looked at this data but did not chart it, if you will now look at it again and in turn tell me, if you will, where Wilson High School, the only predominantly white high school in our public school system, ranks per capita as to expenditure pupilwise?

A Would you like me to check and see if it is a predominantly white high school?

Yes, sir, I wish you would because I would like to know that for the record.

A It is a predominantly white high school and if this figure in parenthesis means it is number seven, Wilson ranks per pupil in the 10,000 to 10,999 range, number seven.

Q I am afraid you will have to explain that to me, Mr. Hobson, because I didn't understand your answer.

A Well, if it is number, if this number seven in parenthesis means that it is number seven in per capita expenditure, it ranks number seven.

Q Yes.

A And it is in the income range of \$10,000 to \$10,000.

Q Yes, sir, and I agree with you that it is in the median family income that you mentioned.

A Right.

Q And you do agree that it ranks seventh in our senior high schools per capita expenditure?

A That's right, according to this.

MR. EARNEST: I have nothing further, Your Honor.

MR. KUNSTLER: That is all I think -- well, I have just a few, Your Honor.

#### FURTHER REDIRECT EXAMINATION

BY MR. KUNSTLER:

Q Mr. Earnest was asking you with regards to the chart which was prepared by the Superintendent of Schools for the House Committee, is that correct?

A Yes.

Q I would like to call your attention to page number 70

where he indicated Wilson had a rank of number seven, as I understood him, is that right?

A That's right.

Q Now, calling your attention to page number 73, again in the Superintendent's report and calling your attention to the rank that the Superintendent gives for Wilson on that chart, what is that?

A On page number 73?

Q Yes.

A The Superintendent ranks it as school number five.

Q Number five. Now, taking a look at page number 73 again, Wilson has a per capita pupil personnel expenditure of \$533.42, is that correct?

A Yes.

Q And the top school is Cardozo, is that correct?

A That's correct.

Q And that is the school in the model plan, in the Model School District, is that correct?

A That's right.

Q And the difference between Cardozo and Wilson is some \$57, is that correct?

A Approximately correct.

is that right?

A According to this document as of October the 21st, 1965 it had an almost even distribution of membership, 696 black children and 627 white children.

Q And the per pupil expenditure is exactly the same as the median, is that correct, on the Superintendent's chart?

A That is correct.

MR. KUNSTLER: That's all, Your Honor.

MR. EARNEST: For fear of having some confusion on the record, I have made reference to Exhibit F-3 which is a plaintiff's exhibit and it reads exactly as Mr. Hobson has said, and exactly the way he testified, which I understand would put it as number seven. Now, that is again based at seventh from the bottom, not seventh in chronological, or rather numerical order. And for fear of anyone misinterpreting this record, I want to put on the record now the situation because it is seventh from the bottom.

THE COURT: Very well.

MR. EARNEST: Not numerically.

THE COURT: Well, I think counsel would accept that.

MR. KUNSTLER: Yes, we would agree to that.

Q And in your answer to my questions, your statement at your last appearance here, you had that in mind when you made that statement, is that correct?

A Yes.

Q Now, in the survey, which we will call the O.E. survey, under Section 402 of the Civil Rights Act of 1964, it is my understanding that the results of the survey indicated that there was more to the question of school integration merely than putting whites and Negroes in the same classroom for the sake of having a salt and pepper effect, isn't that correct?

A Yes.

Q Would you indicate to the Court what there was or what there is from the results of the survey that is achieved by putting whites and Negroes in the same classroom in a public school system?

A Well, the results of the survey do not give comprehensive account of the consequences of children being in a racially integrated school.

The report examines only the achievement consequences, only the consequences in terms of achievement on standardized tests.

The report shows basically two things. One is that as the proportion of white in the school increases the

achievement of Negro students in the school increases. This increase in the analysis of the report is not a large increase, but there is a definite increase in the achievement of Negro students as the proportion of white in the school increased.

Now--

Q Pardon me, if I can interrupt you, Doctor. Is that in every level, primary and secondary?

A Well, analysis of this was not carried out at the primary levels. Such analysis was carried out only on the secondary levels.

Q Secondary levels. Does that include junior high schools and high schools?

A Yes.

Q Now--

A Let me say this. When I say the achievement of Negro students increases as proportion of white increases, what I mean is not that we examined changes in the same school over time, but examined schools of different racial composition and then looked at the achievement of Negro students in these schools of different racial composition.

So that the result is that the achievement of Negro students is somewhat higher in schools of higher proportion of white.

Now a second result which is not directly relevant



to the proportion of white in the school but is indirectly relevant is the fact that a larger increase in the achievement of Negro students occurred in those schools in which the student body was of a higher socio-economic and educational background. So that this is apart from racial composition.

As the socio-economic background and educational background of the student body in the school was higher the achievement was considerably higher of Negro students. The same effect occurred for white students, but it was not as great.

Q Did you discover, Dr. Coleman, at all any difference between, say, Negro pupils who had come into the secondary school system from all black schools as against Negro pupils who, for example, had come into the secondary education from what we call racially mixed or integrated schools?

A Yes. Another analysis was carried out which examined the achievement of Negro students as the function of the amount of time that they had spent in racially integrated as schools; and the amount of time spent in racially integrated schools was greater the achievement was somewhat higher.

Q Now, Doctor, just to call your attention to some specifics, for example, did you find this pattern of increase as far as Negro pupils were concerned, achievement increase, to be present, say, in the classes in reading or in the ability to read, the reading achievement?

but, in general, those were focused on the problems surrounding school integration, particularly with respect to large cities.

Q Now, Dr. Coleman, in your study with reference to the rates of achievement of Negro pupils who were in, for example, all black schools as against Negro pupils who were in racially mixed schools, did you come to any conclusion as to the general effect upon the achievement of Negro pupils of being in an integrated school environment?

A Yes. The general conclusion of the survey staff, based on the results of the survey, of the consequence of being in an integrated school environment for a Negro child was that the Negro child's performance would on the average be somewhat higher than it would in a segregated school environment.

Now, there were several complications to this.

There is some evidence that Negro children's performance is more variable in schools which are racially integrated, which may be a consequence of the fact that Negro children who have been performing most poorly before entering an integrated school perform more poorly after entering an integrated school. Negro children who are performing better before entering an integrated school seem to perform even better after entering an integrated school.

So that there seems to be an increase in the variability, but also an increase in the average.

Q What about the effect of the white students who are in a school into which Negro students are transferred, for example, students in an all white environment suddenly finding a degree of Negro students in their classrooms and in their school?

A A direct analysis of this was not carried out. An analysis which is indirectly related to this was carried out and that is, as I said earlier, the achievement of Negro students increases as the socio-economic background and educational background of other students in the school increases.

The same thing is true of white students. However, the effect is not as large for white students. It is only about half as large for white students as it is for Negro students.

Consequently, inferring from that, one would say that any effect of Negro students in an integrated school on the achievement of white students would depend upon the socio-economic background and educational background of these Negro students. If it was considerably lower than that of the white students in the school, then the achievement of the white students would, in terms of our data, be expected to be somewhat lower. However, the effect is, as I said, about

half as great as that for the Negro students.

Q I notice in some of your material, Doctor, that you indicate that the conclusion of the task force was that a basic difference in school itself was not as important, I mean, plant was not as important as the integration factor. Can you elaborate on that?

A Yes. A number of aspects of the analysis showed, and these results are similar to others that other research has found, a number of aspects of the analysis showed that there was very little effect of, first of all, physical characteristics of the school and, secondly, things having to do with the organization of the curriculum. In other words, the physical and organizational resources of the school seemed to have had very little effect upon the achievement of either Negro or white students in the school. Again, in so far as they did have an effect, they had a larger effect on Negro students than on white; but the effect was quite small compared to what we termed the social resources of the school. In other words, the principal effect of the school appears to be through the kind of social resources that it provides through the teachers and the other students and not through the more observable physical resources of the school.

Q Doctor, I take it from your testimony that you are

our data show.

Q Now, Doctor, in your consideration of the achievement level or the effects on the achievement level of Negro pupils, all pupils in essence but we will concentrate on Negroes for the moment, you also took into consideration the question of the relationship of the quality of the teacher, did you not, to the educational program?

A Yes, we did.

Q Can you indicate to the Court what the survey showed in that respect?

A Well, the survey showed that of all of the characteristics which are associated with the school as a unit, that is, all of the characteristics that are associated with the school apart from the student body, the characteristics that we measured of the teacher were most strongly related to the achievement of the student, in particular, two characteristics of the teacher that we measured. One was the educational background of the teacher, which again divides into two, one, education of the teachers' parents themselves, that is, the education of the teachers' mother, and the other is the educational level that the teacher reached in school, whether the teacher had a college degree or beyond a college degree.

And the second thing was a short self-administered

test, a vocabulary test, which was administered to all teachers in the survey. And the students who were in schools where the teachers performed more highly on these tests performed better than students who were in schools where teachers themselves performed lower on these tests.

Q Dr. Coleman, in the survey did you find any difference in the quality of the teacher as compared to what we call segregated black institutions as against segregated white institutions?

A Yes. This was particularly true in elementary schools in the South. But it was true to a smaller extent generally; that is, teachers of Negro students had lower educational background and had lower scores with respect to this vocabulary test. And this was most true in segregated, in all Negro schools.

Q I see. Now, Doctor, just to get into the question of pupil achievement from another aspect. We have mentioned plant and curriculum and facilities and we have mentioned teachers and we have mentioned somewhat the effect of integrating classrooms, whether you do it on a fifty-fifty or some approximate level or whether it is done with only a few.

Now I would like to come to the question of what your survey found in the situation, and I will give it to

you in the form of a hypothesis, in which you have a school or a classroom in which you have students whose families are very supportive of education, and then you mix into that class students from families which are not supportive of education.

Did you find that there was any effect on, let us take the first group first, those who come from families strongly supportive as far as their achievement is concerned by having the other group in the classroom with them?

A Our results indicate that the achievement of children whose families are strongly supportive of education and whose families have a strong educational background will be less effected by characteristics of other students as well as by other characteristics of the school than will students whose families are not educationally supportive nor have a strong educational background themselves.

We found that students from families with strong educational backgrounds would tend not to do as well as the proportion of students from less strong educational backgrounds came into the school, but that this effect was considerably weaker on them than was the case for children from less strong educational backgrounds.

Q Did you notice in assembling the data for this conclusion whether the racial factor had anything to do with



Q I don't know whether you went into this or not. I was just asking to see whether you did.

What about the effect on the other end of the scale, then, with the child who is from a nonsupportive background put into a school with the opposite number, children from a very supportive background?

A Well, the evidence that we have indicates that this would have quite considerable effect on such a child; that is, that it appears that a child whose educational resources have been missing in his background will gain a great deal from a school situation in which there are other persons with strong educational resources in their background.

Now, if a student does already have strong educational resources in his background, the presence in his environment of other students without that strong background seems not to have as much in effect; but it seems to be a matter that if such a thing has been absent in the child's background before, then the presence of this in the school will have a strong beneficial effect. So it is an asymmetric kind of result.

Q Now, Dr. Coleman, getting back to Negro and white student bodies again, if you take a school which is predominantly Negro and a school which is predominantly white, is it your testimony that the basic factors, that is, the difference between the two of them, putting aside



Q The second of the three recommendations was to redress the racial imbalances in our schools and cities by deliberate color conscious manipulation confronting the difficult issue posed by increasing segregation in many parts of the country, end quote.

MR. CASHMAN: Your Honor, I do have an objection to that question, because I thought the purpose of the redirect was to consult the Doctor with respect to the Office of Education survey. Now we seem to have concluded that and have gone into another field, that is, the recommendations of the President's report; and it is wholly unrelated to the purpose for which this witness was called for direct examination.

THE COURT: I think the Doctor has made clear his position and his findings from the survey, and I think that his testimony already answers that question that you have just asked.

MR. KUNSTLER: Then I will withdraw it, Your Honor.

BY MR. KUNSTLER:

Q I just want to ask you one more question, Doctor, and then I think I will have done.

In the final O.E. report, which is A-18 for

Identification now, the following language appears which I will just ask you to comment on in conclusion, and I am going to read that portion to you. It is from page 23, left-hand column.

"Those Negroes in schools with a higher proportion of whites have a greater sense of control. This finding suggests that the direction such an attitude takes may be associated with the child's school appearance as well as his experience in the larger community."

Would you indicate to the Court what, in essence, that conclusion means as far as a Negro child is concerned?

A Well, let me preface this by saying that we found that one of the strongest factors that was related to achievement of Negro students was what we characterized as their sense of control of the environment or control of their own destiny, that those students who felt a strong sense of control of their destiny had much higher achievement than those students who felt a lesser sense of control.

Secondly, we found that very few characteristics of schools themselves were related to this, but that one characteristic of the school was strongly related to this attitude or sense of control of the environment and this was the proportion of white in the school. As the proportion of

white in the school increased, or in those schools where the proportion of white was greater, the Negro student's sense of control of his destiny or control of his environment was greater.

Q Now, you did find, did you not, that Negro students in general, from the survey, had less of a feeling of control over his own destiny than white students, isn't that correct?

A That is right, yes.

Q And that being in the school with a greater number of whites would add to his own sense that he could control his own environment and his own destiny?

A Yes. In fact, this may be one of the means or mechanisms through which the achievement of the Negro child increases in a school which has a higher proportion of white students, through this change in attitude.

Q And you would consider this a very important aspect, would you not?

A Yes. I would certainly consider it very important because of the strong relationship it showed among all minority group students to achievement itself; that is, it appeared that this is a very strong determinant of the child's achievement in school.

MR. KUNSTLER: I have no further questions, Your

University of Chicago?

A Three years, from 1956 to 1959.

Q And where did you go from there?

A Johns Hopkins University.

Q Now, in what capacity did you enter Johns Hopkins University?

A As associate professor and chairman of the Department of Social Relations.

Q I see. And what was the function of the Department of Social Relations at Johns Hopkins?

A Well, it was a new department. There had not been a department of sociology or social relations. So the function was whatever function the new chairman decided it should have.

Q And what did you decide?

A That it was to be principally a sociology department much like other sociology departments, but was focusing largely on quantitative research methods and studies in sociology of education.

Q Now, are you still at Johns Hopkins University in the same capacity?

A Yes.

Q And your present field of endeavor is educational games?

A Yes, I would say that is my principal field of endeavor.

Q Would you describe to the Court what educational games are?

A Well, they are an attempt to introduce into school curriculum an approach to learning which has a number of advantages over the ordinary approach to learning, one in which students are active rather than passive, one in which the outcome of the activity itself determines how well they do rather than being judged by teacher and a number of other consequences of this; in other words, games which are a natural form of learning among young children and have not been very much used in schools; and there appear to be many ways in which such games designed to simulate some future activity that they will engage in can be productive for their learning.

Q Doctor, have these games been restricted to your research or are they in actual employ in some public school systems?

A They are in actual employ in some public school systems, yes.

Q Can you indicate specifically a game that might fall into this category, an educational game?

A Yes. A good example is a game which I haven't

population surveys -- there were a number of other people involved in that aspect and in other aspects of this, but I think that exhausts the persons who were associated with the central national survey.

MR. CASHMAN: If the Court please, that concludes the defendant's cross-examination on voir dire and the defendants are willing to accept Dr. Coleman as an expert in sociology and as an expert in the area of educational games. But, Your Honor, beyond that we are not willing to accept his expertise.

THE COURT: Well, the Court will accept him as an expert in those areas, so let's proceed.

MR. CASHMAN: Your Honor, what I would attempt to do now is to go as far as I can with respect to the cross-examination of the doctor based on his testimony that was given prior to his appearance today.

That is to say, his testimony in chief -- my cross-examination will relate to his testimony that he gave on his first appearance before this court.

THE COURT: Well, may I suggest to you that you do as much with reference to the cross-examination of this witness as you can because if this witness, as you know, and I did not know, but you knew, is going to spend a year in Europe beginning August the 15th --

the interrogatories, and getting over to Page 34 -- starts on 33 -- getting over to Page 34 where the Strayer Report is talking about eight typical children. You have a phrase, do you not, in the school system, which is known, or a category of pupil, known as SMR; is that correct?

A Yes, this term is applied.

Q And would you indicate to the Court what is an SMR?

A This stands for severely mentally retarded. There are youngsters who are categorized by experts in the field as trainable, as differentiated from educable mentally retarded.

Q Now, if you look on Page 37 of your answer you will notice that there was a recommendation in the Strayer report that the classes be established and be opened to children who are SMR.

Q Now, I am going to ask you, how many classes were established for SMR's in the school system in 1961? How many classes were established for SMR's in the school system in 1962?

A In 1961, four classes for SMR's were organized.

Q Now, I would like to just ask you a few questions about that. As I understand, today you have classes for SMR's; is that correct?

A That is correct.

Q In the school system.

And it is also my understanding that you are utilizing for these classes in some areas under-utilized classrooms in what we would call the elementary schools west of Rock Creek Park; is that true?

A That is correct.

Q And I understand, also, that these classes are usually eight of these pupils to a teacher; is that correct?

A That is about the average, a very small class.

Q Now, if I am not mistaken that in the elementary schools west of Rock Creek you have under-utilized classrooms; is that correct -- as compared to the conditions east of Rock Creek?

A Yes, with this qualification, that the classrooms are now being utilized, either for special classes of this kind or for classes in Braille, sight conservation, hearing conservation, and now for an increase in regular classes through the transportation of children from overcrowded schools.

Q Now, the reason that you have under-utilized the classrooms, had had under-utilized classrooms in what we call these predominantly white schools west of Rock Creek Park, was



because of declining enrollment in these schools; isn't that correct?

A Yes.

Q And you also, as I understand it, have established -- or in the process of bussing program; is that correct?

A That is correct.

Q Take Negro children, for example, out of all black schools somewhere else --

A Take the children out of overcrowded schools.

Q Overcrowded schools, and taking them to undercrowded schools; is that correct?

A That is correct.

Q And if the classrooms in West of Rock Creek that are now being utilized for the SMR's, for example, were not being utilized for that purpose, they would be available, would they not as terminal points for the bus transportation; is that correct?

A That is correct.

Q And that their use for SMR purposes, for example, precludes the transportation by bus, for example, of Negro children from overcrowded schools --

A That is not correct. The children in the SMR classes are being transported by bus from their homes, are picked

up near their homes as a part of our program for the severely mentally retarded, taken by school bus owned by the District of Columbia Board of Education Commissioners, technically, to class rooms which are available.

Now, it so happens that if you analyze racial composition of the children being thus transported, as would be expected in a school system with 90 percent Negro children, the majority of SMR children are Negro children.

Q I understand that, but what I am indicating to you is this, if I am correct if I pose this question to you: if a class room in an all white or predominantly all white school is being used for these eight children, these eight SMR's, whatever their color and however they get there, bus or otherwise, that would preclude the use of that classroom for, for example, twenty or thirty children from overcrowded schools being transported by bus to that particular school; isn't that correct?

A That is correct.

Q Now, these SMR classes are quite self-contained units, are they not? They stay together, they play together?

A In the main, but there is an effort made by teachers and principals to get some general experience for these children in the regular context of the school population.

but in the main they are self-contained.

Q And in the main they would not, then, have anything to do with the rest of the school population of the school in which they happen to be; isn't that correct?

THE COURT: He just answered that question.

THE WITNESS: Again, by saying the principals and teachers make an effort --

MR. KUNSTLER: The Judge pointed out --

THE WITNESS:-- to get some experience for these children by contact with the rest of the school.

BY MR. KUNSTLER:

Q I wanted to ask you just one more question on this: if this had been, instead of an SMR class being brought to the school, a regular class of normal children taken from an overcrowded classroom somewhere else, they would, of course, then -- would not be self-contained as the SMR unit would be; is that correct?

A That is correct.

Q That would be part of the total school population and be mingled with it.

Now, Doctor Hansen, one of the recommendations, for example, of the Strayer Report was, for example, that, as I recall, that Shaw Junior High School -- I am on Page

Q And it is your testimony that there are reading specialists in the basic curricula then, teaching basic curricula classes?

A To the extent that it's possible to find people with special training in this field, yes.

Q How many are there, do you know, in the entire school system?

A Something in the neighborhood of 98 members, reading specialists assigned to the Reading Clinic.

In addition to that, the people who are teaching in the elementary schools, without exception, have training in the teaching of reading, whether they are teaching slow learners or fast learners.

In addition to that, we are, as fast as we can find the people qualified, assigning teachers to the children with mental retardation problems who are qualified in the field of meeting the educational needs of children who have such problems.

This would include emphasis upon remediation in reading as well as other aspects of educational development in the special program.

Q Do you know how many remedial specialists --

A I just told you.

Q I haven't finished the question. -- are assigned to the elementary schools, for example, west of Rock Creek Park, those particular schools?

A I don't have that information in my mind. I would assume that the larger percentage are assigned in schools where there's the greatest amount of retardation reading. And to put this on a geographic basis, my presumption is if you made a spot check of the distribution of the staff, the staffing would be primarily in the schools of the economically restricted sections of the city.

Q Now, on page 8, going back for a moment, where Dr. Strayer recommended a reorganization of the methods and procedures in the selection of candidates, and this had to do with -- I'll read the whole recommendation:

"Reorganizing completely the methods and procedures in the selection of candidates and in the making of appointments to vacancies in all administrative and supervisory positions."

Your answer is that this plan was first proposed by you in March of 1964 and will shortly be presented to the Board of Education.

I would like to ask the question:

Why was there a delay between 1948 and 1964 in

making it available?

A None whatsoever.

Q Now, going to page 30, Number 11, Dr. Strayer's recommendation that classes are too large to permit teachers to give children the kind of individual help and guidance necessary, and he recommended that classes be reduced to 30.

Now, a portion of your answer to recommendation Number 11 was an admission that:

" ... it is still true that on October 21, 1965, of 2556 elementary classes regular grades one to six, 1297 (50.8%) held more than 30 pupils. Of the 77,250 pupils in regular grades one to six, 43,391 (56.2%) were in classes that held more than 30 pupils."

Now, is it not true, Dr. Hansen, that the overwhelming majority of these -- let me put it this way: That the type of school in which you had overcrowded elementary classes, more than 30, were predominantly Negro schools as compared to what we call predominantly white schools?

A This would be in the nature of the situation because a few predominantly white schools, as you've already pointed out, where we have a very limited enrollment, tend to be on the down slide as far as growth is concerned, so the conclusion is

that the larger classes will be found in the schools where the enrollment is on the increase, and particularly where there is an overcrowding factor and where the enrollment is large. There's no question about that. This is a factor of administrative necessity.

Q All right. Now, Dr. Hansen, calling your attention to page 31, to recommendation 15, which indicates that the policy of granting the teachers' requests for transfer should be re-examined and should be handled in a strong, well-staffed office.

Your answer to that recommendation is that transfers are still the function of the Elementary Education Department, and in the past four years requests for transfers have been scrutinized closely, screened and granted only on grounds of education or health reasons.

Is it not true, Dr. Hansen, that a lot of white teachers have asked to be transferred out of Negro schools into predominantly white schools for reasons other than educational or health?

A I would have to speak now with some reservation and answer with a sort of qualification:

This is likely, but the numbers are diminishing, because the numbers of opportunities for transfer -- the number



THE COURT: All right, sir.

THE WITNESS: Sometimes it's a matter of proximity to home, convenience, health reasons within a family which may require a teacher to be as close to her home as possible. But, in general, the tendency is for teachers to want to go into the so-called more favorite school environments.

BY MR. KUNSTLER:

Q And these transfers have been approved by your office? Is that correct?

A Not by my office, but by the offices immediately responsible, such as the Elementary Education Department, et cetera. But generally now we are resisting requests for transfers, and I assisted the department heads by setting up a policy, administration policy, of the 70% rule, which is defined.

Q Is some of the resistance conditioned on the fact that there are simply no more openings available in these white schools, for example, for teachers?

A Not that. There are openings. For example, we had two vacancies in the elementary schools which we deliberately filled through the selection of Negro teachers for those positions.

An effort is being made to get a bi-racial staff in



all our schools.

Q Have Negro teachers in the past applied for transfer to predominantly white schools?

A I'm not able to answer that question. I do not know.

Q Would your records indicate how many have applied?

A The records of the individual offices would indicate, I suspect,--whether they are kept on a permanent basis I don't know-- the number of applications by letter coming in for teachers, but we do not keep a firm record of this type.

Q Would you be adverse to checking as to whether there are any figures available as to how many Negro teachers have applied to transfer to predominantly white schools and what action has been taken?

A We want to give you all the information we can. We'll check, and if any of this information is available by race, we'll make it available to you.

MR. KUNSTLER: Then we'll leave this record open, subject to your objection, of course, Mr. Cashman.

MR. CASHMAN: Is that your ruling, or is that the Court's ruling?

THE COURT: I think that Dr. Hansen has agreed to provide the information unless you have some objection?

BY MR. CASHMAN:

Q Yes. Would you read the paragraph on that page that relates to Dr. Strayer's observations on pupil ability grouping?

A This is the second paragraph on page 541, reading as follows:

"But recognition of the importance of common needs does not imply identical learning activities for all youth. Obviously this could only lead toward mass mediocrity. Investigations of the characteristics of adolescents have repeatedly shown the wide diversities in their abilities, achievements, interests, and personal needs. As everyone knows, pupils of the same chronological age vary greatly in the rate and quality of their learning. Most pupils make what is commonly called normal progress in their school subjects. But at the extremes will be found some who learn very slowly and others who learn very rapidly. Unfortunately, school programs are geared primarily to the middle 25 to 40 percent. Some adjustments in curriculum and method are made for the slow learners, but typically in American secondary schools little is done to provide learning experience commensurate with the abilities and needs of the gifted. What this

means is that gifted youth, who possess the greatest potentialities for leadership and for making distinguished contributions in the arts, science, literature, and every other field of endeavor, are often neglected."

MR. CASHMAN: I have no further questions.

MR. KUNSTLER: Just one on redirect.

REDIRECT EXAMINATION

BY MR. KUNSTLER:

Q Dr. Hansen, just two questions:

That passage that you were reading from relates to junior and senior high schools, does it not?

A That is correct.

Q Secondly, I would just like to ask you one question:

This could also refer, could it not, to honors programs as well as full curricula programs, could it not, special honors programs?

A It could.

Q That's right?

A Special classes.

MR. KUNSTLER: Thank you. No further questions.

THE COURT: I think that's all, Dr. Hansen, now. Thank you very much.

THE WITNESS: Thank you.

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APPELLANTS' APPENDIX

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 21,167  
CARL C. SMUCK  
a Member of the Board of Education  
of the District of Columbia,  
*Appellant*

v.

JULIUS W. HOBSON, *et al.*,  
*Appellees.*

---

No. 21,168  
CARL F. HANSEN,  
Superintendent of Schools of the  
District of Columbia,  
*Appellant,*

v.

JULIUS W. HOBSON, *et al.*,  
*Appellees.*

---

APPEALS FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA  
United States Court of Appeals  
for the District of Columbia Circuit

FILED JUN 11 1968

VOLUME IV

*Nathan J. Paulson*  
CLERK

(i)

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## P R O C E E D I N G S

THE COURT: I assume we should take first the motion of certain defendants for voluntary displacement.

Mr. Cashman, would you like to be heard, sir?

MR. CASHMAN: May it please the Court:

Your Honor, everything that the defendants wished to say in connection with the motion asking the Court for voluntary displacement has been said in that motion. I have no further commentary on it, Your Honor, by way of oral argument, unless the Court has some questions of counsel.

THE COURT: I have no questions.

The matter of having a Judge excused is outlined in the Judicial Code, Section 144. It provides that an affidavit of prejudice shall be filed not less than ten days before the beginning of the term or, as has been interpreted, ten days before the trial begins.

The purpose of this statute is obvious. Probably the most effective way of frustrating the administration of justice is by delaying it, by setting at naught what has already been done during the trial of the case.

The Court has felt, during the trial of this case, that there has been a concerted effort to delay it, to

frustrate prosecution, the administration of justice.

The filing of this motion culminates that attempt.

The filing of this motion, a motion which, if granted, would set at naught all we have done in this case in the last three months, several thousand pages of testimony have been taken, well over 100 exhibits have been introduced in evidence. This waste of time and money, particularly in a case where citizens are petitioning their own Government for redress of grievances, is to be appalled. This case, in particular, calls for an enforcement of this rule, this statute passed by the Congress of the United States.

The matters which have been brought to the Court's attention as a basis for voluntary displacement have been a matter of public notice for almost two years. The James Madison Lecture, which this Court gave at New York University, has been published in the New York Law Journal, I don't know exactly the name of it, almost two years ago.

The lecture was also noted by all the press media here in the city, if not at the time it was given, certainly at the time this trial began. So there is no basis for waiting three months after the trial of the case



to make a motion based on those grounds.

The only other grounds urged are some remarks made by the Court at the close of the last session in which I again indicated that the delay on the part of some of the defendants was frustrating the prosecution of this case, and that I felt that the case ought to move on because it was an injunction proceeding which, as I have already indicated several times during this trial, pre-empted the calendar and requires an immediate determination as to whether or not relief should be granted.

I find no basis whatever in those remarks for any suggestion as made by the motion. For these reasons, the motion will be denied.

All right, Mr. Cashman, call your witness, please.

MR. CASHMAN: If Your Honor pleases, there are a couple of other matters that I would like to take up.

THE COURT: All right.

MR. CASHMAN: With respect to the Court, prior to the time any witnesses are called.

Your Honor, as I indicated to you before on the record, October 3, this date, was to be the time when we had to finish the cross examination of Doctor James Coleman.

attempts to get Doctor Coleman back here.

Now, Your Honor, if the Court wishes, I will make an affidavit concerning the details as I have recited to the Court in my attempts to produce Doctor Coleman.

THE COURT: That won't be necessary.

MR. CASHMAN: I might also say, Your Honor, that I was surprised on the 30th of September, last Friday, to learn that the Court had issued an order relating to documents on which it had up until that time, reserved its ruling.

It was my understanding that parties were to submit by the 30th of September, legal memoranda relating to the questions that were posed on the admissibility of these documents.

THE COURT: Well, Mr. Cashman, do you have the record there? My recollection is that I indicated at the time that I would rule on these objections to the introduction of evidence by September 30. My recollection may be in error.

MR. CASHMAN: No, Your Honor, your recollection is not in error. I have the transcript on page 2001, and I quote the transcript:

So the Court will issue the following

order: Counsel for both sides will, by September 30, file any memoranda which they deem necessary or appropriate in connection with the offers in evidence, the rulings on which have been reserved by the Court. The Court will make those rulings on the basis of the written memoranda. There will be no further oral argument with reference to those offers, that is, by September 30.

Now, Your Honor, I took that to mean that we had until the close of filing time on September 30th to produce our written memoranda upon which the Court will base its ruling. I was buttressed in that belief by conversations with counsel for the other side who was working on a memorandum -- whether or not it was filed, Your Honor, I don't know -- but was working on a memorandum of law on Friday for the purpose of meeting what he considered to be his obligation under the Court's rule.

And, Your Honor, I filed my memorandum in the Clerk's Office here at approximately 4:00 o'clock on Friday afternoon.

Now, Your Honor, I might say that in connection

with that ruling there was admitted the Office of Education Survey. Your Honor, the purpose of the cross examination of Doctor Coleman related especially to the admissibility of that document.

If this Court has now ruled that that document is in, then the cross examination of Doctor Coleman, to which we felt we were entitled and which we thought would be a matter of record before the Court ruled on that particular document, it seems to me if that is in, Doctor Coleman's presence is not necessary.

I would like to say something else, Your Honor, in connection with the Office of Education Survey. I don't have the transcript here with me now, but I have the distinct recollection that when Doctor Coleman first testified and when this survey first came up for consideration by the Court, the defendants made many objections, among which was we did not think Doctor Coleman should testify or that the documents should come in on the basis that we had no way of acquiring the District of Columbia data.

My recollection is, and I think the transcript will reveal, that this Court was receptive to defendants' argument and indicated on the record that unless we had access

to data which gave us a basis for cross examination, this Court would, 1, not admit the document, and 2, not permit Doctor Coleman to testify concerning the document.

At a later time in the proceedings, a representative of the Office of Education came here and testified that he would make available under the protective powers of the Court the data that was up to that time considered to be confidentially held by the Office of Education. This data, as I understood it, was going to be made available to the Court, to the parties for both sides, in camera.

Now in connection with the production of that material we worked with Doctor Mood, who does represent the Office of Education, and gave the information I just related to the Court, and we have had correspondence from Doctor Mood that we would have the District data about October 1, 1966.

Your Honor, I have here a copy of a letter dated September 2, 1966, from Doctor Mood to Mr. Mullaney, who just handed me the document.

Your Honor, I have here a copy of a letter dated September 2, 1966, and I would ask that this document be marked so it may be a part of the record in connection with

my remarks that I am making right now.

I want to furnish the other side with a copy of this.

THE DEPUTY CLERK: Defendant's No. 1, marked for identification.

(Thereupon, Defendant's Exhibit No. 1 was marked for identification.)

THE COURT: All right, sir.

MR. CASHMAN: If the Court pleases, I invite the Court's attention to the second paragraph. It reads:

These data will be ready about October 1, 1966, my estimate of the time required was six weeks rather than two weeks. Forwarding of the data will be contingent upon prior receipt of written assurance of Judge Wright that the information will not be made public.

Now, Your Honor, we have received nothing thus far, so again my view, we are back to the position we were in the Court's first view of this matter. We do not have access to the data, it has not been made available to us, and the documents with which it is concerned is now, according to the Court's ruling, already in evidence.

We think, Your Honor, we have been deprived, under those circumstances, of a legitimate right to cross examination. I urge upon Your Honor with every sincerity that this is no technicality, this is no attempt to delay. I think the defendants are fully entitled, Your Honor, to cross examine a basis upon which this document is concerned, especially as it relates to the District of Columbia. We are foreclosed from doing that, Your Honor.

THE COURT: Mr. Cashman, what is your information from Mr. Mood about the availability of this data?

MR. CASHMAN: Your Honor, I conferred with Mr. Mood last week, the latter part of last week. I believe it was Thursday. At that time Mr. Mood made a number of representations to me, one of which was that the Office of Education -- well, let me quote him exactly, I don't want to misquote the man.

My best recollection is that he said that he was not going to make available either all or part of the District data.

My request to him was to put that in writing because Your Honor, I wanted to appear before the Court this morning with a document in my hand that supports what I have just told the Court.

I have not as yet received Doctor Mood's letter. It was his information to me that in composition of the letter he was going to confer with his superiors and he was further going to confer with the attorneys from the Office of Education.

I have heard nothing thus far. But this is one compelling fact, Your Honor. I don't have anything ~~in~~ part of time, and it is October 3rd.

Your Honor, that concludes my remarks to the Court.

Excuse me, Your Honor, if I may have your indulgence.

(Pause.)

THE COURT: To clear the record, the document heretofore marked Defendant's 1 this morning is remarked Defendant's 14.

(Thereupon, Defendant's Exhibit No. 14 was marked for identification.)

MR. CASHMAN: Very well, Your Honor.

THE COURT: All right, sir.

MR. CASHMAN: Your Honor, so the record will be abundantly clear, for the reasons I have just stated, I am going to ask the Court to rescind its order of the 30th



offices in every way possible to assist counsel for the defendants in getting any information, any data that it possibly can get from the Office of Education.

We have reason to believe that this education information will become available. It may be that there has been some problem arising with reference to it, Doctor Mood has from time to time promised it would become available under certain conditions and there was no reason to believe that these promises will not be kept.

So we will attempt to get this data for counsel, with counsel's cooperation.

Now, we have then, as the Court understands it, the cross examination of Mr. Hobson, so unless counsel are otherwise inclined, we will proceed with the cross examination of Mr. Hobson.

MR. KUNSTLER: Your Honor, one informal matter. I would like to introduce to you my son-in-law who is a member of the Bar of the State of New York, Neil Goldman, not of counsel, but sitting in today.

THE COURT: He may sit at the table.

MR. MULLANEY: Your Honor, I will cross examine Mr. Hobson.

THE COURT: All right.

that is not typical.

Q An atypical area?

A Right.

Q So to perhaps have your errors which may be inherent in small areas --

A That's right.

Q . . . you make a composite of other areas and hope they will cancel out?

A That's right.

Q I see.

Now if I may turn to the overleaf, please.

Would you turn to the overleaf? I want to be clear that I understand the statistics that appear on the overleaf. I understand that the statistics that are typed into the dotted area concern white?

A That is correct.

Q People. The statistics that are typed into the barred area concern Negro people?

A Black people.

Q Black people I should say.

Now as I understand the first number that appears with respect to the white people is the total number of whites in that area during, I believe, the year 1964?

this is a figure of \$3,000?

A This is a 1960 figure. I have been seeing data on this and defining poverty ever since the late fifties.

Q Right. Poverty has been around a long time.

A Right.

Q Now the \$3,000 figure, is that still in current useage today?

A About \$3,000, maybe \$3,500, maybe \$3,200.

Q Can you tell me if any agency of the Federal Government uses the \$3,000 figure for purposes of defining poverty?

A I don't know of any particular agency that uses it. I think that the Census Bureau, I think the Office of Economic Opportunity, Social Security Administration, and anybody that engages in economic data measuring median family income generally uses the \$3,000 level. Some people use a range, from \$3,000 and below; some use \$3,500.

Q But in drawing up the chart you feel that the figure \$3,000 is a reasonable and representative figure of the thinking and economics today?

A I think it's about as close as you can get, yes.

Q All right. Now, Mr. Hobson, in presenting this

chart to the Court for acceptance in evidence, just what were you attempting to demonstrate to the Court?

A I am trying to demonstrate to the Court in presenting this chart that where the population is predominantly white and where the percentage of poor children, of poor people, is predominantly low, that the average expenditure per pupil of elementary schools in that area is the highest, and where the population is predominantly black, and where the percentage of poor families is much higher, that the average expenditure for elementary schools in those areas are lower, generally speaking.

Q I see. Mr. Hobson, is this disproportionate amount of expenditure which you claim is demonstrated by examination of that chart, is that a result of some intent upon the part of the defendants in this case?

A If you want my answer to that --

MR. KUNSTLER: Your Honor, --

THE COURT: Wait just a minute, please.

MR. KUNSTLER: I think it is an objectionable question. Of course, the claim of the plaintiffs is that there is an intent or that this is a de facto condition created outside of intent, but I am not sure whether that is a proper question to ask of a witness on the stand, what

is the intent of the defendants.

THE COURT: Well, I think the witness says he wants to answer the question, so I will overrule the objection.

BY MR. MULLANEY:

Q I would like to have him answer.

A We have the fact of life here based on tangible evidence that this has gone on through time. I don't care whether they intended it or not, the effect is what I worry about.

Q This is at least the effect?

A The effect is bad on black children.

Q You are not willing to insist it is intent on the part of the defendants?

A I don't insist one way or the other. I am willing to insist this is a fact of life, and it adversely affects black children.

Q How does it adversely affect the black children?

A It adversely affects them because if they live in areas where they spend less money per child they are not getting as much education as they would if they lived where they were spending more money per child. I think our evidence demonstrates that.

Q Is the per pupil expenditure in a school or area, as you have it here, a good indication of the quality of education being offered the children in those areas?

A I don't think any one factor is a good indication of the quality of education. I think a combination of factors in that area would be a good indication of quality of education. However, I think a disproportionate amount is a strong indication.

Q Strong indication?

A That's right, of what education a child would get living in that area.

Q I see. Now, Mr. Hobson, the figures on the part which are dollar figures, although you do not have the dollar sign in front of them, you know what I refer to, for example, the figures roughly in the centers of the colored areas?

A Right.

Q By colored I mean red, orange, green, yellow. They are for the elementary schools?

A Right.

Q In the areas in the District of Columbia. Mr. Hobson, did you give any consideration to doing similar

charts for the per pupil expenditures for the junior high or senior high schools in the District of Columbia?

A None whatsoever, just elementary.

Q I see. Can you indicate why you didn't consider that?

A No, except that this makes the point beautifully and I didn't want to add any more to it.

Q You don't want to add any more to the picture than the elementary schools?

A No. This makes my point.

Q This is not what you call a biased sample, is it?

A It could be biased. It is a perfectly acceptable statistical concept. Let's say for the record, if you want to, ~~it is biased.~~

Q The other chart you indicated was a biased chart because you only gave statistics for some of the elementary schools and here you have all the elementary schools, but have not gone to consider the senior and junior high schools?

MR. KUNSTLER: Your Honor, the biased sample was used, rather than biased chart. I think there is a difference statistically.

BY MR. MULLANEY:

Q That could be identified perhaps as a biased sample?

A It perhaps could.

Q In the per pupil expenditure?

A It could be considered as a biased sample under one of two conditions. If you are interested in the elementary schools in the District of Columbia, we have a total universe of elementary schools so it would not be biased.

If you are interested in the per pupil expenditure of junior and senior high schools, it would be biased. But here I am interested in the average expenditure per pupil of elementary schools in the District of Columbia, so we have not taken a selected number of elementary schools but all the elementary schools as far as we have been able to determine in these areas, so therefore, from that point of view, it is not a biased sample.

Q Thank you.

MR. MULLANEY: Will the Court bear with me for a minute or two?

(Pause.)

BY MR. MULLANEY:

Q Mr. Hobson, as you have indicated, one of your jobs during your day work at Social Security Administration is arraying information to see if it tells anything.



MR. KUNSTLER: Your Honor, there is such a whispered colloquy going on.

MR. MULLANEY: I am trying to help the witness, your Honor.

THE COURT: State the question.

MR. MULLANEY: I asked Mr. Hobson if he would indicate to me from a copy of Exhibit P-4 how many Negro and how many white children attend the Grant Elementary School.

THE COURT: Are you able to answer that, Mr. Hobson?

THE WITNESS: Over here where it says regular grade 1 to 6, there are 25 white students and 49 black, and over under where it says "Special Education, SMR" there are no whites, and 16 black and here are some more symbols down here which I don't understand, which say HC and SC and they have no whites in HC and 27 blacks in HC and in SC they have four whites and 19 blacks.

BY MR. MULLANEY:

Q. As you can see they have a lot of diverse classes at the Grant School, Mr. Hobson. Looking at the legend "TSRS" I believe, according to the legend--the severely mentally retarded class in which there are located 16 Negroes and no whites.

The HC is the Hearing Conservation Class at Grant,

in which there are no whites and 27 Negro.

And the SC is the Sight Conservation Class at which there are four whites and nineteen Negroes. So, as I have indicated in the regular classes there are 25 whites and there are 49 Negro.

In the Severely mentally retarded class at Grant, there are no whites and 16 colored.

In the Hearing Conservation Classes, there are 27 colored and no white, and, as you finally indicated in the Sight Conservation Classes, there are four white and nineteen colored.

So, this gives us a total attendance in the Grant School, Mr. Hobson, Whites - 29; Negroes, 111.

Do you agree with my calculation, Mr. Hobson, 49, 16, 27 and 19, equals 111.

A. That's right. I agree.

Q. All right. Thank you, Mr. Hobson.

Now, would you turn to the Stevens School in Exhibit P-4 which shows the pupil population by race.

A. Stevens? I don't believe there is a Stevens School listed in here.

Q. Yes, there it is.

A. O.K.

Q. All right.

Would you indicate for me in the regular classes, Mr. Hobson, how many white there are, the regular classes would be the column on the left.

A. Right. It would be 30 white.

Q. Thirty white and how many Negro?

A. 199 Negro.

Q. I see. Now then, there are some special classes at Stevens School.

A. Yes.

Q. There is a special academic class in which there are three whites and thirty-three Negro?

A. Twenty-two Negro.

Q. I am sorry. Three white and twenty-two Negro.

Now, in the "SA" which means Social Adjustment," as you will see in the legend, Mr. Hobson, there are how many white pupils?

A. None.

Q. How many Negroes?

A. Ten.

Q. And in the other special class, that is held at the Stevens, the severally mentally retarded class there are how many white?

A. No whites, and 13 Negro.

Q. 13 Negroes. So that the white population in total, including special classes and regular classes in the

Stevens School is 33 and the Negro population regular classes and special classes is 244.

Now, Mr. Hobson, would you turn to the third elementary school located in Area VIII, Sumner School.

A. O.K.

Q. Mr. Hobson, would you indicate for me the number of white students that attend Sumner?

A. Twenty-one.

Q. And how many Negroes attend Sumner?

A. Two hundred fifty-seven. These are in Grades 1 to 6, now.

Q. That is right. We are just considering elementary schools now. Two hundred and--

A. And fifty-seven.

Q. Thank you. Are there any special classes at Sumner, Mr. Hobson, as indicated by the exhibits P-4 which you have in evidence?

A. No, I do not believe so.

Q. All right. Mr. Hobson, will you agree with me when I state according to Exhibit P-4 in evidence, the number of white children in Area VIII that attend the public schools of the District of Columbia is 83, that is a total of 29 whites that attend Grant, the 33 whites that attend Stevens and the 21 whites that attend Sumner?

A. O.K.

Q. All right. Thank you.

Now, Mr. Hobson, going over to the number of Negroes that attend the elementary schools in your area VIII, Grant's 111, Stevens 244 and Sumner with 257, do you concur with me that the total Negroes attending elementary schools in Area VIII are 612?

A. I have not added that, but I will go along with it.

Q. You will take that figure for now.

A. Right.

Q. All right. Mr. Hobson, we may right here do a percentage calculation. Will you adopt my per cent if I put the per cent of white and colored that attend elementary schools in Area VIII?

A. I will adopt it.

Q. Can you see any reason why the figure 88.1 per cent Negro, and the balance, of course, which would be 19.9 per cent white attend area VIII elementary schools?

A. Right.

Q. You have no objection to that figure?

A. Right.

THE COURT: Other than the fact that it is wrong.

MR. MULLANEY: Eleven, your Honor, I will take eleven any day. 1c

THE COURT: Yes.

BY MR. MULLANEY:

Q. Mr. Hobson, you drew up your chart and indicated the areas with predominance of whites?

A. Right.

Q. By taking the total number of whites and then the total number of Negroes according to the vital statistics that you have?

A. Yes.

Q. In terms of drawing up exhibit V-14, you did not consider for purposes of identifying an area as predominantly white, 10 per cent white and so on, the number of pupils that attend schools in that area?

A. No, because that would not indicate whether the area was predominantly white or not. That would have no bearing on the question.

Q. Mr. Hobson, do you suppose the District of Columbia School System is aware of the fact that the attendance at the elementary schools in Area VIII is not the same as the overall population in area VIII.

MR. KUNSTLER: I do not think he can answer what the District of Columbia Schools are aware of.

THE COURT: Sustain the objection.

BY MR. MULLANEY:

Q. Mr. Hobson, the per pupil expenditure figure which you have there, \$459, and which you indicated was a

significant factor in the quality of the education being offered the pupils that receive that money and does that \$459 go to all the people in that area, do they all attend elementary schools or does it just benefit the children that attend the elementary schools in that area?

A. I could not answer that. I cannot ~~be~~ saying.

Q. Is that too complicated?

A. No. It is not too complicated but to say whether or not a particular elementary school in an area only benefits the pupils in the school is a little farther than I want to go. If you want to say it, I will not quarrel with it. I am sure there are a number of factors that benefit or affect everybody that lives in the area.

Q. Are any of these factors on the chart you offered to the Court to be submitted in evidence?

A. No, this chart does not deal with that question at all.

Q. This chart does deal with the per pupil expenditure in the elementary school and how it appears to be dictated by the total population in the area with no reference to the number of Negroes or whites in the schools in that area.

A. I would have to say again that this chart is designed to show that generally where the areas are predominantly

white in population the expenditure per pupil is given here and where they are predominantly black the expenditure per pupil in elementary schools average expenditure per pupil is generally lower; that's all in charts designed to show, and it shows that.

Q. I see. Now, all right, Mr. Hobson. We will leave Area VIII for now, and consider your other two areas, Areas I,II which are the two areas west of Rock Creek Park, wherein you indicate that these are two significant points in illustrating that generally the per-pupil expenditure in the elementary schools in the District of Columbia is dictated by the number of whites and/or the amount of poverty in that area?

A. I did not indicate it was dictated by that. This chart simply shows.

Q. There is a phenomenon at least.

A. Just a minute. Let me tell you what I indicated. I said in the areas in the District of Columbia that are predominantly white that the expenditure per pupil is generally higher. I did not use "dictated." I didn't use "phenomenon." I did not use any determinant or causal factor here. All I said was--I made the statement based on these facts and I did not use any language like that about what dictated that.



Q. Mr. Hobson, do you have any idea why the per pupil expenditure in the areas, predominantly white areas west of Rock Creek Park is higher?

A. Yes, because the school system spends more money in each of the schools there.

Q. Do you have any idea why they spend more money in the schools--elementary schools in area I or Area II than generally in the--

A. Do you want my opinion. I am not sure why. I will say my opinion is they discriminate against the black people and the poor people. That is my opinion. Whether that is true from their point of view or not, I do not know. I am convinced from the data I have seen they do it to discriminate against the poor black or poor white children.

Q. I assume you were aware of the data, you filed a complaint in this suit. Is that complaint intended to indicate your private opinion that this is an intentional situation?

---

MR. KUNSTLER: Your Honor, I think this cross is getting a little bit out of that chart. Up to now he has more or less confined himself to the chart whether it is correct or valid or is a statistical device. Now, he is going into the complaint and Mr. Hobson's motives.

this particular witness had to do with drawing a complaint the Court is unaware of. I might say also the Supreme Court in the last term indicated the facts I am stating, that these are legal matters addressed to counsel and to hold a party responsible for what the lawyer says in the complaint does not make much sense.

MR. MULLANEY: That is right, your Honor.

If I may go back to a statement made by Mr. Hobson, he indicated that it was his view that the actions of the defendants in this case are a discrimination against the Negro and the family of poverty in the public school system.

Now, Mr. Hobson, and the two points you illustrate are points in areas I and II, Mr. Hobson, I again show you a copy of your exhibit N-7-B, over which I have superimposed for your convenience the statistical areas which you have drawn up in Exhibit V-14.

BY MR. MULLANEY:

Q. Mr. Hobson, would you indicate for me, this, incidentally, Mr. Hobson, is a map which you offered which shows in the white lines generally the Junior High School attendance areas in the city.

Mr. Hobson, will you tell the Court which Junior High School attendance area nearly approximates, most nearly

approximates your statistical area I?

A. I didn't deal with junior high schools on this map here. I would have to study this before I can start talking about the junior high schools.

Now, I will look on here and try to see if there are any junior high schools. If you show me statistical Area I.

MR. KUNSTLER: Before that goes further, your Honor, I would like to object about junior or senior high schools. The chart is offered only as to elementary schools. I think that was established on direct and cross and I think questions going to junior and senior high schools are outside the direct.

THE COURT: What is the purpose of this line of questioning?

MR. MULLANEY: Your Honor, the purpose of the line of questioning is, it may or may not be, we are not making a determination one way or another at least in terms of the complaint, but it may be that the situation is an intentional situation, and it may be that it is a phenomenon. The situation that the per-pupil expenditure is higher in these two predominantly white areas, areas I and II in addition to Area VIII. We discussed whether it is intentional or not intentional, your Honor. If Mr. Hobson will agree with me, now that this situation is not intentional, then I will not

facts of the case and the Court will make and draw what inferences it can from those facts. As far as what Mr. Hobson thinks is unpersuasive and irrelevant.

Now, as far as the facts as to the distribution of white and Negro poor and non-poor in the junior and senior highs as compared to the elementary schools they are all in the record. Those facts speak for themselves and I do not think that you can make anything out of those facts by arguing them with Mr. Hobson.

I think you should argue them in the briefs or whatever you would like to file with the Court.

This is really not the place to argue them.

MR. MULLANEY: Do I understand your Honor that I am foreclosed from the discussion of material already in evidence in perhaps trying to mitigate somewhat another piece of evidence which is just now coming in.

THE COURT: If you would be more precise and tell me what you want to do.

Do you want to show that the numbers from the junior and senior highs are somewhat equivalent to the numbers in the elementary school.

MR. MULLANEY: No, your Honor, I want to show more than that. I want to show here in substantial contravention of this general trend that exists at the elementary

school level and being in substantial contravention, it would help very substantially to mitigate the piece of evidence that is in the offering and perhaps may indicate this piece of evidence --that it gives a misleading view of the situation.

MR. KUNSTLER: Your Honor, If I may suggest, I think he is talking about his direct case on defense to put a witness on with a chart and junior and senior high schools. I think that it would be perfectly proper but he is taking my charts on the direct, trying to expand that to cover the junior and senior high schools. I think he should do the same thing we did, prepare his chart, put his person on the stand and present what he wants to present. But I do not think it is on cross examination where that should be done.

THE COURT: Did you want to say anything more, Mr. Mullaney?

MR. MULLANEY: No, your Honor, I will stand by the ruling on how far I may continue on cross examination of this man.

THE COURT: Well, this witness can be recalled by the defendants during their case to prove anything that the defendants want to prove with reference to the junior and senior high schools. And consequently with that statement and with that assurance the Court would suggest that you stick more closely to the direct examination of the witness.

MR. MULLANEY: Indulge me a minute.

(Pause.)

THE COURT: I understand counsel's position.

MR. CASHMAN: Your Honor, there is one further matter I would like to take up with the Court, if I may, and it concerns the availability of the District of Columbia data.

I promised the Court that I would make available to it as soon as possible the letter that Doctor Mood was going to send me pursuant to our conversation of last week.

Your Honor, I have that letter before me and it is very pertinent to the issue of the admissibility of the Office of Education survey.

I refer especially to the second and third paragraphs of the letter, and I want to read them:

"Judge Wright outlined in court certain conditions of protection and asked if the Department would be willing to make available under those conditions the material held in confidence if he decided that receipt of the material is needed in the case.

"As I informed you on September 29, I believe we should take no further action to make available this material until we are informed that the court has established that it is needed in the case and further specifies the conditions of protection from

public disclosure which will be afforded.

"I am still hopeful that Judge Wright will decide the material is not needed for then there would be no risk at all generated by the trial with respect to disclosure of the D. C. data.

"The District of Columbia schools which were chosen to participate in this survey were not selected to be representative of the District school system.

"Therefore, it would be incorrect to state that the survey provides data which are representative of educational opportunities in the District of Columbia school system.

"The survey collected and analyzed data designed to disclose these opportunities nationally and regionally, as I believe I testified, but not to show the conditions in any individual school system."

May I have this letter marked, Your Honor?

THE COURT: Yes. This is the first I have heard of this letter.

THE DEPUTY CLERK: Defendants' Exhibit No. 17.

THE COURT: Nor have I seen it.

MR. CASHMAN: No, Your Honor, you haven't. I just



be afforded."

Now, Your HONor, as I read that language they mean that without further representations, and as I say, they ask for court action -- that they are not going to take any further action to make it available to us.

THE COURT: All right. Now, suppose we explore what conditions the data would be usable to you under.

For example, assume that the data is voluminous. Would there be any problem in your going to where the data is to study it rather than try to have it bulked from one office to another?

MR. CASHMAN: Let me give you my observation on that, Your Honor.

This data was originally stored, according to my knowledge, in Princeton, New Jersey, at the Educational Testing Service.

Since Mr. Mood made his remarks to the Court concerning the availability of the data, the District material is being selected out and is being printed.

I have oral information that this job will be completed in about a week.

Now, I think, Your Honor, that that obviates any necessity for a trip. It would be printed and be available



to me -- whatever they are going to make available.

I don't want to be on record, Your Honor, as indicating to the Court that the Office of Education is going to make everything that the District did in this area available.

I think they have some reservations about some areas, Your Honor, but I don't want to represent that to you. I would rather that that came from the mouth of the Office of Education.

THE COURT: I assume then that we should wait for an answer to my question until we see what data they have available or intend to make available through this printing process.

My next question is this: With reference to the public disclosure of this data, we have had a problem about this before in this trial and I would like to hear you on this particular problem.

Can we make any references to this? Can we give Doctor Mood any assurances with reference to this?

MR. CASHMAN: Your Honor, I don't know. Now, that question is quite broad, as you realize, Your Honor.

It is difficult for me to say at this time without having the data as to how the confidentiality of the data would be protected.

Now, it appears to me that the Office of Education has

a concern that the Court will set up certain protective measures.

Now, Your Honor, it is very difficult for me and I would not wish to commit myself to say yes or no until I knew what the Court had in mind in terms of protecting the confidentiality of these documents.

We'd try to be as cooperative with the Court as I possibly could be.

THE COURT: The ordinary --

MR. CASHMAN: I will put it that way.

THE COURT: The ordinary approach to a similar problem is to take the testimony with respect to the data and have the testimony sealed, placed in the Clerk's office under seal for use by counsel in the case and by Court in the case.

Now, that is the age-old means by which this problem is solved.

MR. CASHMAN: Yes, Your Honor. I understand that that is how the record is preserved in terms of the transcript.

But other problems, of course, Your Honor, may arise, and I am sure I can't forecast them all.

One would be if that data was going to be used by the District to examine, say, Doctor Coleman, on the stand, is the courtroom clear?

You see, I don't know exactly what necessary pro-

TECTIVE measures would have to be taken.

I would try to cooperate, as I said, with the Court in all of them in order to preserve the confidentiality of the documents.

MR. KUNSTLER: Your HONOR, may I make a suggestion here that may be helpful?

I find this a little hard to follow because this is their material. We are not talking about someone else's material. It is the School Board's material.

If they want to use the material, they are waiving -- it is their privilege which was extended by the Department of Education to them, telling them it would be confidential. That is why they furnished it.

If they want to use it now in open court, it is their privilege. They are perfectly free to waive it. They represent the School Board which was given the confidential promise.

It isn't the Office of Education that has a promise. It is the School Board has a promise, and they are perfectly free to waive that.

They represent the Board. It is their own material they are talking about. It is the figures and facts they gave and which they know, and if they want to use it in cross-

examination, they waive their privilege.

I don't really see that we are talking about somebody else's confidence. It is their own confidence they are talking about.

MR. CASHMAN: May I reply to that, Your Honor?

I thought it was quite clear from Doctor Mood that the promise of confidentiality was of concern not only to the District of Columbia but also to the Office of Education for this reason, Your Honor:

The survey of the matters involved, involved race, parental background and a lot of what I would characterize as sensitive areas.

Now, the only source that the Office of Education has is a national sampling. That is the only way they can get information out of perhaps a need to know.

Now this source will dry up on the Office of Education if it is given in confidence and the confidence is revealed.

I think, Your Honor, that is the concern of the Office of Education.

Again, I don't mean to speak fully for them because, of course, I don't represent them.

But for counsel to indicate that it is the District's

material is factually in error, Your Honor.

It was material that was printed by Educational Testing Service, sent out in booklet form, for the children, for the teachers, for the counselors, for the principals, for the superintendent of the school, to fill out and send back.

We don't have any of that information, Your Honor.

THE COURT: I see.

Well, at least the recent discussion brings a new dimension to the problem and perhaps eases it to some extent. Maybe or maybe not.

But certainly we should explore it.

Now, apparently Doctor Mood wants to explore it with me, and if you want me, at the appropriate time, to talk to Doctor Mood, and see whether or not this matter can be arranged on an agreeable basis, why we can do this. I can do it this afternoon, later this afternoon, and see what arrangements can be made that may be satisfactory.

MR. CASHMAN: Your Honor, I believe that Doctor Mood is represented by counsel in this matter. I would ask that all counsel be present, too, as to the exploratory means that the Court might have by way of protecting the confidentiality of the documents.

THE COURT: Well, Mr. Cashman, would it be convenient for you and Mr. Kunstler to have a conference with that counsel and see what you gentlemen can work out, and certainly anything hat you can work out would be agreeable to the Court.

Now, if you need the Court in some way to work it out, why I would certainly be willing to enter the conference, but certainly in the first instance, there may be a way of working it out among yourselves.

MR. CASHMAN: Your Honor, I would be glad to try that but I don't know how successful it will be.

I think the Office of Education wants a court assurance rather than whatever might be done between counsel. That is my view, Your Honor.

THE COURT: Suppose we have a conference in chambers at ten o'clock tomorrow morning.

MR. CASHMAN: Very well, Your Honor.

THE COURT: Who is this lawyer?

MR. CASHMAN: Who is the attorney? There are a number of attorneys for the --

THE COURT: Which one do you suggest we have?

MR. CASHMAN: There is Mr. Hannon and there has been a Mr. Powers, and there is another attorney --

THE COURT: Mr. Cashman, would you undertake to ask

MR. KUNSTLER: That is correct. We will take care of that.

THE COURT: Thank you.

MR. CASHMAN: Your Honor, this will now relate to the matters that have been promised by our side during the presentation of plaintiff's case if the matters were available.

I am referring especially, Your Honor, to those materials that were promised to the Court by Doctor Hansen and Commissioner Tobriner.

In connection with that, Your Honor, we have here the number of out-of-boundary children enrolled in open schools for the school year 1965-66.

Do we have a copy available for the other side at this time?

MR. MULLANEY: I will make one available to them today.

MR. CASHMAN: Your Honor, it may be necessary for us to furnish copies of these documents at a later time during the day, but I would like to show them to the other side before presentation to the Court.

THE COURT: Very well.

MR. KUNSTLER: We have no objection, Your Honor.

MR. CASHMAN: All right.

Your Honor, during the course of the proceedings inquiry was made concerning the activities of the Model School Division and a documentary with respect to those activities was promised the Court.

In connection with that, I have one, two documents with attachments, Your Honor, and I would ask that they be marked at this time. I do not have a copy for plaintiffs. I will make it available, Your Honor, later on during the day.

THE COURT: All right, sir.

MR. CASHMAN: They may go into evidence, I have no objection.

MR. KUNTSLER: A-35, Your Honor.

THE DEPUTY CLERK: Plaintiff's Exhibits A-35 and A-36 marked for identification.

THE COURT: Let them be admitted without objection.

(Plaintiff's Exhibits A-35 and A-36 were marked and received in evidence.)

MR. CASHMAN: Your Honor, the next document promised by the defendants for presentation to plaintiffs concerns the number of high school dropouts re-entering



Armstrong Adult Education Center, and the STAY Program, for purposes of receiving a diploma. I have furnished the other side a copy.

MR. KUNSTLER: C-20, Your Honor.

THE COURT: Let it be so marked and admitted without objection.

THE DEPUTY CLERK: Plaintiff's Exhibit C-20 marked and received.

(Plaintiff's Exhibit C-20  
marked and received in  
evidence.)

MR. CASHMAN: Your Honor, the last time that Doctor Hansen was on the stand there was inquiry about the in-service training activities for teacher education and enrichment. I have the document Doctor Hansen promised to the Court in connection with that testimony.

Your Honor, it is, however, one page short of a covering letter. We have it. However, it is marked. We prefer to give the Court a clean copy of the cover letter.

MR. KUNSTLER: We can give that a number, Your Honor, which is L-18.

THE COURT: Are you offering it?

MR. KUNSTLER: I am offering it.

MR. CASHMAN: I have no objection to it.

THE COURT: Let it be admitted without objection.

THE DEPUTY CLERK: Plaintiff's Exhibit L-18  
marked in evidence.

(Plaintiff's Exhibit No. L-18  
was marked and received in  
evidence.)

MR. CASHMAN: Your Honor, request was made for  
a breakdown by race in both the junior and senior high  
schools in the special academic curriculum. We promised  
this material, Your Honor, on the condition that it was  
available.

We do keep figures, Your Honor, regarding such  
statistics relating to the junior high schools only, and  
that is what I have, Your Honor, in connection with our  
promise to make that material available.

I would like to show the other side a copy, and  
I have a copy here for the Court.

If it is offered by plaintiffs, Your Honor,  
defendants have no objection to it.

MR. KUNSTLER: We will give that P-20, Your  
Honor, with a notation it does not include the senior high  
schools, as I understand it, only the junior high schools;  
is that correct?

MR. CASHMAN: That is correct. No figures are

kept for senior high schools.

THE DEPUTY CLERK: Plaintiff's Exhibit P-20 is marked for identification.

THE COURT: And it is being offered?

MR. KUNSTLER: It is being offered, Your Honor.

THE COURT: Admitted without objection.

(Plaintiff's Exhibit P-20  
was marked and received in  
evidence.)

MR. CASHMAN: The next item of business, Your Honor, concerns itself with plaintiff's request for the median income of Western High School, and I have a document which explains that, Your Honor. I presented a copy to the other side.

If it is offered, there is no objection on the part of the defendants.

THE COURT: All right, sir.

MR. KUNSTLER: Offered as N-10, Your Honor.

THE COURT: Admitted without objection.

(Plaintiff's Exhibit No. N-10  
was marked and received in  
evidence.)

MR. CASHMAN: Your Honor, so that plaintiffs will be fully informed with respect to their request, a statistical summary of very recent vintage concerning the

in-service training activities came to us, and I presented the older summary of in-service training activities. I have the more up-to-date one for plaintiffs, if they wish to make it available.

MR. KUNSTLER: Mr. Cashman, is this in substitution for the previous exhibit, as to in-service training, or an addition?

MR. CASHMAN: This would be in addition to -- as a document that would be in addition to what we have already given.

MR. KUNSTLER: That would bring that up-to-date?

MR. CASHMAN: It would bring it up-to-date, yes.

MR. KUNSTLER: We have no objection, Your Honor.

We will make that L-19, and offer it.

THE DEPUTY CLERK: Plaintiff's Exhibit No. L-19, marked for identification.

MR. CASHMAN: No objection, Your Honor.

THE COURT: Admitted without objection.

(Plaintiff's Exhibit No. L-19  
was marked and received in  
evidence.)

MR. CASHMAN: Your Honor, certain information was requested by plaintiffs concerning the drop-out statistics as they relate to tracks. We have, Your Honor, a document

which explains that insofar as we have statistics.

I offer that now to plaintiffs for their use if they wish. This information, Your Honor, relates to drop-out by track at the senior and junior high school levels.

MR. KUNSTLER: We would offer that, Your Honor, as C-21.

THE COURT: No objection?

MR. CASHMAN: No objection, Your Honor.

THE COURT: Let it be admitted.

THE DEPUTY CLERK: Plaintiff's Exhibit No. C-21, in evidence.

(Plaintiff's Exhibit No. C-21  
was marked and received in  
evidence.)

MR. CASHMAN: In further connection, Your Honor, with the matter of dropouts, we have a document indicating the number of school personnel involved in the taking of drop-out surveys. We are referring especially to surveys on the drop-out problem conducted in August of 1963, July and August, 1964, and July and August, 1965.

MR. KUNSTLER: Mr. Cashman, this is not in response to one of our requests, is it? This is an additional factor on drop-outs?

MR. CASHMAN: I don't know whether or not you made a specific request for this or not, Mr. Kunstler. My information is that you did, on your listing under numeral page 629.

MR. KUNSTLER: Yes. And we will give that number C-22, Your Honor, and also offer it.

MR. CASHMAN: It was at the request of plaintiffs, Your Honor. We have no objection to it.

THE COURT: All right.

THE DEPUTY CLERK: Plaintiff's Exhibit No. C-22, offered.

THE COURT: Let it be admitted without objection.

(Plaintiff's Exhibit No. C-22,  
was marked and received in  
evidence.)

MR. CASHMAN: Your Honor's indulgence for a moment?

(Pause.)

MR. CASHMAN: In further connection, Your Honor, with the matter of drop-outs, we have what we also believe was requested by plaintiffs, namely a document describing the number of people in the Department of Pupil Personnel presently engaged in a program to identify and administer to those children who are drop-out prone, and that is

available for plaintiffs.

MR. KUNSTLER: I thought that was C-22. Is this an addition to C-22?

MR. CASHMAN: This would be an addition to C-22, yes.

MR. KUNSTLER: Then we would give that No. C-23, Your Honor.

THE COURT: And offer it?

MR. KUNSTLER: And offer it, Your Honor.

MR. CASHMAN: Without objection, Your Honor.

THE DEPUTY CLERK: Plaintiff's Exhibit No. C-23 marked for identification.

THE COURT: Admitted.

(Plaintiff's Exhibit No. C-23  
was marked and received in  
evidence.)

MR. CASHMAN: Your Honor, certain documents with respect to the WISE Program were requested by plaintiffs. I have three documents relating to the WISE Program, and, Your Honor, I am unable at this time to furnish the other side copies. I will do so later on during the day, Your Honor.

I would like to make it available though for their perusal so they will be able to determine whether or

not they wish to offer it.

MR. KUNSTLER: This would take a little time to look at it. I would like to have it marked N-11, for identification.

THE COURT: Let it be marked N-11, for identification, and we will wait on whether or not it is going to be offered.

THE DEPUTY CLERK: Plaintiff's Exhibit No. N-11, marked for identification.

(Plaintiff's Exhibit No. N-11  
was marked for identification.)

THE COURT: I think we should go to something else though while we are waiting.

MR. CASHMAN: Yes, Your Honor.

Your Honor, I would like to return Exhibit No. B-7, Court's exhibit, that came into our hands.

THE COURT: All right, sir. Thank you very much.

MR. CASHMAN: Your Honor, I have documents here relating to a request from plaintiffs, I believe it was very early in the prosecution of this lawsuit, and if my memory serves, Your Honor, it came in connection with a request for documents in a motion to produce or else by way of interrogatory, one of the two. However, Your Honor,



it has come to our attention in connection with the preparation of our own defense, and we make it available to the plaintiffs at this time.

It concerns a per pupil expenditure by school during the year 1964-65 from our budget sources, and is based on an average daily membership by pupil. That is available if it is wished to be introduced by plaintiffs,

Your Honor

THE COURT: Have you given plaintiffs a copy?

MR. CASHMAN: I have given plaintiffs a copy.

THE COURT: I assume they will want to study that.

MR. KUNSTLER: Your Honor, we would offer this as P-21. It is two documents. I guess they can be marked together.

THE DEPUTY CLERK: Plaintiff's Exhibit P-21, marked for identification.

(Plaintiff's Exhibit No. P-21  
marked for identification.)

MR. KUNSTLER: Are you going to supply the ADA, average daily attendance figures also requested?

MR. CASHMAN: I don't believe they are kept on an ADA basis.

MR. REDMON: Call Mr. John Koontz, please.

Thereupon --

MR. JOHN D. KOONTZ

was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REDMON:

Q Will you state your full name, please?

A John Donovan Koontz [spelling] K-o-o-n-t-z.

Q Mr. Koontz, are you presently employed with the District of Columbia public school system?

A I am Assistant Superintendent of Schools in charge of junior and senior high schools.

Q Mr. Koontz, are you a native-born Washingtonian?

A I am a native-born Washingtonian.

Q What high school did you go to in Washington, if any?

A I graduated from Eastern High School.

Q Are you possessed of any academic degrees beyond high school?

A I have a Bachelor's Degree from District of Columbia -- well, Wilson Teachers' College in those days. And I have a Master's Degree from George Washington University.

Q The Wilson Teachers' College is now known as the

27 D. C. Teachers' College?

A The D. C. Teachers' College.

Q Have you taken any courses in education beyond those required for your Master's Degree?

A I have had several courses in education beyond those required for the Master's Degree.

MR. KUNSTLER: Your Honor, I hate to interrupt, but I am having difficulty hearing.

THE COURT: Can you speak a little louder or get closer to the microphone, Mr. Koontz?

THE WITNESS: Yes, sir. I am generally not bothered with that.

THE COURT: This is a new experience for you?

THE WITNESS: Very much so, sir.

Yes, I have several courses beyond the Master's Degree in Education.

BY MR. REDMON:

Q What schools did you attend besides George Washington University?

A Graduate School of the Department of Agriculture, Maryland University, Syracuse, Williams College, Colorado College and like a lot of school teachers, I have been an educational bum.

Q Mr. Koontz, when did you first enter the employ of

convinced us that the flow would be better in this manner. The original boundary that we had like this [indicating on the map] straight North and South continuing down here didn't offer enough relief to Macfarland. So we had to move the boundary along the avenue here [indicating].

Q Now, when the lines are finally drawn, are you the final decision in terms of --

A Well, I submit the lines to the Superintendent with my recommendation that this should be the school boundary. The Superintendent of Schools has the ultimate authority.

Q Now, did the boundaries change at all in the Macfarland, Paul, Taft or the Backus areas as a result of this?

A Oh, yes, of course.

Q Will you tell us, sir, how each of those boundaries changed as a result of this new school?

A Well, the shift in boundaries here [indicating on the map] between Backus and Taft in order to relieve Taft, because Taft is a greatly overcrowded school. We moved the Backus area into here [indicating on the map] and made some slight shift of the student population in here [indicating].

The Backus area ran over into this neighborhood [indicating]. We moved the Backus boundary back to Riggs Road.

The Paul boundary, we cut a portion out here [indicating. In Macfarland -- This is part of Macfarland - Backus down in here [indicating]. So we gave Backus some

39 relief here [indicating] and some relief to Macfarland in here [indicating] and created this as the new school boundary.

Q Now, the primary reason for the change of boundary lines then was to relieve overcrowding?

A That is correct.

Q I hand you, sir, this pin map and ask you to identify it?

A It is a pin map of the Kelly-Miller Junior High School area as of last year. Kelly-Miller is a Junior High School located in the far Northeast and I have to look to get the exact address of Kelly-Miller, I am sorry to say. It's on a small off street. It is on Brooks Street but we don't call it the Brooks Street address. It is 49th and Brooks Streets.

Q And that is Northeast?

A It is located right here [indicating on the map] in this large complex.

Q The Kelly-Miller Junior High School is adjacent to the new Roper School; is that correct?

A Yes, it's adjacent to the Roper School.

Q At least the boundary lines are contiguous?

A Yes, that is correct.

Q Now, in terms of developing the boundary lines for the Roper School, did you construct that pin map there?

A Well, this is the type of thing I mentioned in the

previous map, in the previous case. This is just one of the schools. Each of the schools concerned prepared a map like this showing where the students actually lived. We had maps done like this for Sousa, Woodson, Miller and Evans.

Again, the principals in these four schools got together and discussed the boundaries and came up with a recommendation for the boundaries of the new school based on the projected enrollment in each school and the capacity of the school.

Because of overcrowding here at Kramer Junior High School [indicating], excessive overcrowding at Kramer, we had to shift, prior to opening this school, we shifted certain areas into Sousa in order to prevent a possible double-shift situation at Kramer.

So, as far as the opening of Roper is concerned, it gave relief in terms of overcapacities to the schools all the way over to Kramer.

The principals submitted their recommended boundaries to us. We discussed this, again, with the people in the community, as well as in our own office, and we made some minor alterations in terms of adjusting the boundaries and these are the ones that were approved.

Q Now, is this pin map, Mr. Koontz, a fair replica of the type of pin map that is used in developing boundary lines

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A Yes.

MR. REDMON: Would you mark this as defendants' exhibit number 48, please?

THE DEPUTY CLERK: Defendants' Exhibit Number 48 is marked for identification.

(Defendants' Exhibit No. 48  
was marked for identification.)

BY MR. REDMON:

Q Mr. Koontz, with respect to the construction of additions on junior and senior high schools, what criteria are applied when such additions are made?

A Well, additions are added to schools to take care of an increased enrollment. Also, hopefully, when we make additions we can do some modernization in existing buildings at the time the additions are added. But this is to take care of increased enrollments in a particular community.

Q In the course of developing the boundary lines and attempting to plan for new schools, do you find any population shift or explosion in the City of Washington and, if so, in what areas?

A Well, of course, the far side of the river here [indicating on the map] has just been fantastic in growth in terms of secondary schools.

Q Is that the Anacostia River?

A The far Northeast and the Anacostia - Congress Heights Area. That is the area of greatest growth and we have had some growth out here in this neighborhood [indicating on the map]. But also we are overcrowded all through the center of the City as well. We have just grown in every place except greatly on the far side of the Park. But this has been the area of greatest growth [indicating].

Q Now, with respect to mobility of population, do you find any movement or transition with respect to certain school area?

A Well, some of the city areas have great mobility in terms of students transferring in or out. For example, Francis Junior High School will have almost 100% turnover in terms of students moving. Not necessarily 100% move out but Francis has 1,100 students and Mr. Bristor's statistics will show that there are maybe 900 transfers in and out of Francis in the course of a year; high mobility. A youngster may move out and move back very shortly after this.

Q I see. With respect to teacher assignments in the junior and senior high schools, Mr. Koontz, what criteria do you apply in the assignment of teachers in the various sections of the City and schools?

A Well, in terms of placing of teachers and assigning of teachers, we must first give precedence to probationary



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people in terms of new assignments. They get precedence. Then we hire temporary teachers.

For several years we have had a policy in which we attempt to maintain a ratio between permanent, temporary and probationary people. In other words, a school with a high percentage of permanent teachers in it, which we would not allow to transfer in or we would not make appointments, probationary appointments, to that school unless, for example, the teacher was actually teaching there and wanted to remain there, or a vacancy occurred in that particular school and we had no vacancy elsewhere and the person on the probationary list would have to be assigned to that particular vacancy.

Q Now, do you have any policy with respect to any attempts to integrate the teaching or administrative staff?

A Well, at the secondary school level we have made a conscious effort to integrate the administrative staff and faculties.

Q And what, if any, problems do you find with respect to an integration of schools?

A Well, there are problems, of course, in this. We have found that if you are going to integrate a faculty, whether it be an all Negro or all white community, it's important to attempt to send in more than one or two people to offer a racially balanced school. With our expanding junior and

senior high school population and the great increase in the number of teachers that we are receiving, it is possible for us to move in sizable groups of people. The only thing is it is difficult sometimes to get people to move into certain of our school communities.

Q Is there any connection between the residence of the teacher and the location of the school?

A Well, I think it is. The interesting thing about opening up these two new schools --

Q Roper and Rabaut?

A Yes. This is a middle-class community [indicating on the map] and a great many of our school teachers live here in this particular area. We had approximately sixty requests from permanent teachers to transfer into the Rabaut School. Into the Rabaut School we had sixty requests. Of those sixty requests fifty, I think, were permanent. In the Roper School we had nineteen requests for transfers and only eleven were permanent teachers.

Q What sort of neighborhood is the Roper?

A The Roper is in the far Northeast. It is in a considerably lower social and economic group and not very many of my teachers live in that particular area.

Q Now, with respect to geographical locations, are there any particular schools in which it might be difficult to

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find a teacher to drive to?

A Well, the Ballous High Area is a difficult area to reach. This is in the far Southeast. If you live in this section [indicating on the map] this [indicating] is a hard place to get to. We have difficulty in staffing this type area. We had some difficulty in getting out into the Evans, Miller and Roper areas. However, with the opening of Kenilworth Avenue -- that freeway there -- several years ago, it has greatly facilitated the movement, and the people in this particular neighborhood now find it is not too inconvenient to go South Dakota Avenue to the Baltimore-Washington Parkway and Kenilworth Avenue into this complex of schools. But we do have more difficulty in staffing such schools. It is much more desirable to be in this [indicating] section of the City.

Q What is the procedure, Mr. Koontz, for the appointment of new principals or the transfer of principals from one school to another?

A Well, in the appointment of new principals, of course, the position must be advertised and all qualified people have the opportunity to apply. Their credentials are examined and they have an oral examination by a screening committee under the direction of the Assistant Superintendent in charge of personnel. And then the person who is ranked number one on that list gets that position if there is only one position

is a late afternoon and evening school, for junior high school age youngsters who are just disturbing in a school and just can't adjust in a large school situation. We bring them back into a school after the school is closed, after the regular school is dismissed, and run a specialized program for them in the late afternoon and evening. And this has been very -- maybe not as successful as Boys' but it has been a good program.

Our summer program for this type of youngster, I think, has been our most spectacular success. In other words, we ran two summer schools this summer for students who, under normal circumstances, would not have been allowed to enroll in a regular summer school because their attendance was so poor, their discipline was so bad, or they just couldn't -- They would have been too disturbing to have in a regular summer school. We did a lot of counseling with these youngsters prior to enrolling. We brought them into a summer school and if they achieved successfully in the summer school the work they failed-- and they were almost all failures and retained and retarded -- we gave them the opportunity to go forward a year and not be retained. And we did this with Boys' the summer before last and had such a high degree of success in terms of adjustment of these youngsters that this year we have done it with Boys' and girls, and we ran two schools. I don't know how successful it is; it is too early to determine how successful this year's

administrative staff, such as principals and assistant principals, with respect to race?

A In an integrated school I think this is a very important thing to have. Yes, I think there is an advantage.

Q Mr. Koontz, with respect to the children who do not complete their secondary education -- and the term has been used in this case as dropout, which seems to be the commonly-accepted colloquialism -- what programs are in effect in the junior high and senior high levels with respect to attempting to identify and retain these children before they leave the school?

A Well, I would have to start with the regular school program because I think this is primarily designed to meet the needs of the bulk of our students. And, certainly, I would have to say (1), the four-track curriculum at the senior high school level. But we do have a great many special programs designed to encourage dropout prone students to remain in school, and if they do drop out of school to get them back in school.

For example, the massive survey conducted by Mrs. Davis, Assistant Superintendent, Department of Pupil Appraisal, Study and Attendance, this past year which identified better than 20,000 potential dropouts in our schools is an indication of an awareness. And this information was provided the

office on the under sixteen program and the Neighborhood Youth Corps and the total people enrolled.

Q Would you tell us, please, how many enrolled?

A The total enrollment was 1,774.

Q In terms of keeping this particular job, is it a prerequisite or a requisite that the child must stay in the school while he is working?

A This is a requirement. He must be in school in order to hold the job.

I might add that a number of these youngsters -- I think it is over 700, I don't remember the exact figure -- were under sixteen. The early identification of dropouts is an important factor in this program. We are trying to meet them before they can reach the age of dropout, and these youngsters are working in and around schools mostly.

Q Are there any scholarships available with respect to needy children just on the basis of need?

A Well, the Woodward Foundation has given the public schools for a number of years a good many thousands of dollars just for needy youngsters as scholarships in order that they may remain in school.

For example, it is completely conceivable that a girl would have to go home and take care of the youngsters while the mother went out to work. And she couldn't qualify for this

50 of continuing students on in school. Many of these girls in the past, if they had been above the compulsory school age, dropped out of school. Many of them who were on the borderline area at fifteen would just get released and not return to school because they would be home taking care of their baby. Under this program we are getting these youngsters back into school.

Q How about the Boys' Junior-Senior High?

A The Boys' Junior-Senior High we have had for a number of years. This is a small school for outwardly acting boys who have been highly disturbed and highly destructive in a school community. We had a lot of failures in this school because these are youngsters that the school systems have given up on. Formerly we would put these boys out on the street because we would have declared them beyond our control. But by small classes and a lot of specialized help, speech work, the reading work, good physical activity program, remediation, etc., we have had enough success with this program in terms of getting youngsters back into school or into holding jobs that we think it is a very productive thing.

Now, it costs more, a lot more than our regular school program. For example, it doesn't cost nearly as much to train a person for the job corps or keeping him in an institution. This is one of the most expensive educational programs that we run. We also run a twilight program, which



~~a name.~~ And it is approved by the Board of Education.

Q Is there any consideration of race with respect to the selection of appointment of principals in the junior and senior high levels?

A Well, I would have to say no and then say yes. We make a concerted effort to provide an integrated faculty, an integrated counseling corps and an integrated officer corps. If the best person happens not to be of a particular race then I would have to pick the best person. But we do attempt to provide this opportunity.

Q Now, does this same procedure apply to the appointment of assistant principals, Mr. Koontz?

A Yes.

Q Now, with respect to the appointment of Assistant Principals last year, how many appointments were made?

A I don't have exactly that figure in mind but I think there were about eighteen to twenty appointments of Assistant Principals at the junior and senior high school levels last year.

Q To your recollection, how many of them were Negroes?

A I think all of them were Negroes but I would have to double-check.

Q Do you find any advantage in the balance of the



program has been.

Q How about this work scholarship program?

A The work scholarship program last year had about 1,800 students in our school system who were in need working in and around schools or community organizations from five to ten hours a week. These students received \$1.25 an hour. I would like to emphasize that the supervision of these students very, very frequently was done by a school teacher who would stay after school and doing this on her own time so that this youngster and other youngsters like it could have an opportunity to have some walking-around money in his pocket so that he could participate and do the things that all other youngsters were doing.

In addition, we know that many of our youngsters had dropped out of school and used as an excuse for dropping out of school that they needed a job or were in economic need. So this helped to alleviate this. There was a considerable turnover back and forth in this but we still think that it has been a productive thing. There is considerable evidence to show that many of these youngsters stayed in school and they probably would have left school if there hadn't been such a program.

Q Would you identify that document, please?

A Well, that is a report from the work-scholarship

principals and the counselors and we individually handled each program of just such a youngster in an effort to make certain that he was taking the type of things that would best fit his needs.

In addition, for those who have dropped out or who have been forced out for various reasons -- for example, we are one of the few school systems in the country and, certainly, I think we probably have the best of this kind -- we have a school for unwed mothers. This is a big school now in terms of enrollment. It has grown and it meets a very definite need, because the young girl who is forced to leave school because she becomes pregnant goes to the Webster Girls School, as we call it, continues her education, receives psychiatric and social worker services and counseling and prenatal care and instruction as well as her academic subjects.

When she is unable to continue in school and must go home and have her baby she is then carried on a visiting instruction program. At such time as she is able to return to school she is returned to a regular junior or senior high school -- and in some cases even an elementary school -- and there has been less loss in education than if she had to drop out of school at the time she began to show that she was pregnant and not come back until several months after her baby was born. This has been a very productive thing in terms

because there is no opportunity for her to work. Well, the Woodward Foundation -- the Woodward Scholarships, as we call them -- would help in a particular case like this. The Woodward Scholarships began before the work scholarship program, I might add, because we felt for a long time that this was needed. These youngsters have had a high degree of remaining in school. This has been a good thing.

Q What about the Stay Program?

A Well, the Stay Program is a school which operates, again, in the late afternoon or evening for dropouts. At the present time we have about 1,100 such youngsters enrolled. These students were corralled, were visited by counselors and teachers during the summer and urged to return to school. We even went into pool rooms after them in some cases to make sure that it would work, that we could contact them. They go back to school in the late afternoon and the evening. Because of the nature of the program, they can pick up six Carnegie Units, whereas the average high school student picks up four, four and one-half to five. He takes a double period of a subject and completes the subject in a half a year, and he may take up to three subjects per half a year. This enables the average dropout to complete his education more quickly.

Again, the objective of the school is to get the youngster back into the regular day program, if possible, but,

if not, have him continue his education until he gets a high school diploma. And we had a considerable number that received high school diplomas last June. You probably read in the paper about one of them not getting a diploma.

Q Do you have any programs which are not academic in nature with respect to development of some of these students in the underdeveloped areas?

A Not academic in nature?

Q Yes. For example, are there any theatre programs, any books made available, etc.?

A Well, Benjamin Henley is the Assistant Superintendent in charge of the Urban Service Corps. The Urban Service Corps was originally funded through Meyer Foundation money, which has as its primary purpose to provide enrichment activities for the center of the city youngsters. When we received the four and one-half million-dollars of Impact Aid money, this money was designed and specified in the original grant -- that was several years ago -- that this should be spent in the schools with the highest percentage of poor youngsters. As an outgrowth of Impact Aid and Title 1 money -- and private money that we have been able to get through contributions and foundations, etc. -- we have done considerable in the way of enrichment. For example, we have just recently this week signed a contract with the Arena Theatre where we buy the Arena

Theatre out for twelve performances. And our youngsters, all in the center of the city, all in Title 1 or Impact Aid schools, will be able to go to the Arena.

Now, just to provide enrichment or a trip to the theatre and not do anything about it just isn't fair. You know, it is like pouring water on the floor. You can mop it up and it will have no effect. We will really work around these enrichment experiences. Patrick Hayes is bringing into our schools a great many concerts, not just a formal concert but a concert where the small group explains what they are doing and why they are doing it so the children are close enough to see and feel the music. So much of music just can't be really understood and felt if you can't see the musicians performing. This type of thing, we think, is important.

In addition, this past year and this year in our Title 1 schools -- these are the schools where a high percentage of youngsters are identified as being in the lowest percent in terms of social and economic groups, etc., this is a complicated criteria, and Joe Carroll's people have developed it. We will give paperback books to the students. Now, these paperbacks the students pick themselves. And I think this is an important aspect of the program. The distributor has been so interested in our scheme that instead of having the books delivered to a teacher for a classroom, we have a bookmobile

which drives up to the school with thousands of titles in the bookmobile, and the student may go through and pick out the book he would like to read. This is the kid's book and he has picked it. Some of them, according to my way of thinking, really aren't worth reading. But the important thing is that the youngster will probably read it; and we want to get children to read. If we can get the children to read and get them to speak we can change them. We bring about a change, we think. And so these books are available for all of these students regardless of their classification and school. They may go through the bookmobile and pick out what they want. If the title is not there, the distributor will get it for us.

THE COURT: We will take a 5-minutes recess so the reporters can change.

THE DEPUTY MARSHAL: This Honorable Court stands recessed for 5-minutes.

[Whereupon, at 3:45 p. m. the Court recessed as noted.]

AFTER RECESS

(The trial was resumed at 3:55 o'clock p.m.  
pursuant to the recess.)

Thereupon,

JOHN D. KOONTZ

resumed the witness stand pursuant to the recess and testified  
as follows:

BY MR. REDMON:

Q In terms of the Cultural Enrichment Program, Mr.  
Koontz, would you tell us about the big concert program?

A I mentioned the Patrick Hayes Concert Program.

Q Are there any programs with respect to concerts --  
musical programs?

A We have, I think, perhaps you are making reference  
to the youth orchestra which is our own concert program which  
has been developed in the last several years. We have a very  
large city-wide youth orchestra. For example, this summer we  
had fifteen teachers working with this group and we were  
centered in Cordoza High School. Last year we were so large  
we had to spill out to other groups. We also had the city-  
wide chorus. These groups are quite good, nearly professional  
in their achievement and these youngsters come from all over

the city to participate in the program. But the core is in the center of the city.

Q Any programs in creative arts?

A During the past summer we ran a large enrichment summer program under Title I of the Education Act. This was the second year we ran such a program but this summer was quite large because we had more money, opportunities for students to select creative art, writing, typing, subjects of their own interest, foreign language for example, if they were interested in whether they had a background in it or not, they were allowed to participate in the program.

Q How about the Widening Horizons Program?

A The Widening Horizons Program originated with the Cabinet wives. Mrs. Goldberg and Mrs. McNamara were the driving influence behind it. Today it is operated out of the Urban Service Corps office and we do send youngsters on enriching experiences and tours, for example from the Library of Congress where they would be met by someone at the Library of Congress and given a conducted tour of the place; National Institute of Health, Mount Vernon, Smithsonian --all over the city, and thousands of thousands of city youngsters had an opportunity under the Widening Horizons Program to go places.



Q Mr. Koontz, as Assistant Superintendent in junior and senior high schools, you have some knowledge about the four track curriculum now in existence?

A Yes, sir.

Q With respect to the development of the sequence, for example, either the college preparatory or honors level, what steps were taken by virtue of administrative action in setting up this curriculum sequence?

A I was principal of Anacostia High School at the time of the development of the four-track curriculum. The honors and the regular college preparatory program was structured in terms of curriculum sequence to prepare a student for college. The courses outlined in the two sequences were developed after examining in considerable detail the initial requirements of a great many colleges across the country, both private and public, and we made a composite picture what these requirements would be and included this as a requirement for completion of graduation from regular college preparatory sequence.

MR. KUNSTLER: Your Honor, could we fix the date on this? I think there was a question what administrative steps were taken and the answer was when he was at Anacostia High School.

BY MR. REDMON:

Q Roughly what year was that?

A I became principal of Anacostia, I think, '55-'56. I was appointed in October and didn't actually take the job over until November. I think it was '55 but I would have to look at my own personnel card.

Q Are we reasonably close when we talk about '55 or '56?

A That is correct.

Q With respect to the sequences developed to educate the child for entrance into a college, is there any particular year in which the election should be made, and is there any limitation when the election cannot be made for the twelve year period of time the child is in school?

A The colleges are putting so much pressure on secondary education today, in order to get into college a student should start preparing for college as early in his high school career as possible. It is possible a student should start preparing at the 9th grade --at the 10th grade at the very latest-- and by doubling up and carrying an extra heavy load it is conceivable that a student could get in and meet the admission requirements

of a good many colleges by beginning his college preparatory program at the 11th grade. But this becomes increasingly difficult.

Q Now, with respect to the program that a child takes, junior high and senior high level, is there knowledge on the part of the parent as to exact courses being taken each semester?

A In the spring of the year students make an election of subjects for the next semester, for the next September. Most of our subjects as you know are yearly courses. The student is given a program card and he meets with the counselor to discuss this. At that time parents are invited to discuss the programming, the schedule. The program card is sent home for the parent to sign and return.

Q Now that signature is an indication of knowledge on the part of the parent the curriculum is being elected for the following semester?

A Yes, sir.

Q Now, with respect to your supervision of curriculum placement of a student in a junior and senior high school level, what steps do you take in terms of such supervision?

A Well, the responsibility for the immediate supervision in the junior and senior high schools is that of a principal. He has the responsibility. This is spelled out that he must examine the jackets of every student at least twice a year in order to make sure the youngster is carrying the right sequence of courses in terms of his potential and ability. However, in our office we keep a relatively close tab on these things. I, for years, have examined the standardized tests or IQ or any other test that we may give. If it comes in standardized form I get from the Department of Pupil Appraisal the individual scores. These come on IBM sheets, and where there are deviations, and I want to emphasize there will be deviations because tests go as one factor in group placement. The youngster could conceivably change. I comment on the score and ask the principals to give me an answer as to why he thinks this has happened and this is done and has been done for many years in my office. It takes considerable time, I might add, to do this and I never do it in the office. I always do it at home on my own time because it is easier to do it at home and go down the IBM sheets and mark them up.

Q Now with respect to cross tracking, will you identify what cross tracking is, Mr. Koontz, in the four-track curriculum?

A Cross tracking is very simple. It is a student taking a course in a curriculum sequence above or below the sequence which he is placed.

Q Is this permissible in the four-track curriculum in junior and senior high school?

A Yes, sir, it is.

Q With respect to the determination whether cross tracking shall take place, if a parent requests that a child be allowed to cross track, that is, to elect courses outside of the curriculum, is this permission granted?

A It is.

Q Is there any directive to that effect to the junior and senior high school principals?

A I think there is a directive from the Superintendent of Schools to this effect. We discussed this many times in our principals' meetings, such permission must be granted. We do this.

Q In what year?

A In the last school year.

Q I am going to show you, Mr. Koontz, what has been identified as Defendant's Exhibit 20(F) for Identification. This is a poster which purports to show the composition of Western High School by race in years 1953 through the school year 1965. Will you look at that poster, Mr. Koontz. You will note in 1965, or at least the beginning of the school year of '65 the number of Negro students amounted to 52.6% and White 47.4%.

Q This is open school?

A Open school.

Q Would you tell us what an open school is?

A A school which is under capacity; therefore, in terms of pupil enrollment and therefor can accept out of zone students from over-crowded schools.

Q Now, do you know when this school was developed as an open school?

A It has been an open school ever since I have Assistant Superintendent. There have been transfers into Western High School.

Q For at least eight years?

A At least eight years.

Q In terms of boundary changes, have there been boundary changes since you have been Assistant?

A Yes, there have.

Q With respect to any change in eastern boundary of Western, can you tell us what that was and when it was made?

A Three years ago we moved a portion of the eastern boundary of Western High School from 16th Street to 14th Street.

Q What was the purpose of that change?

A Because Cardoza High School was overcrowded, Dunbar High School was overcrowded, and we had to offer some relief to Cardoza and students from Cardoza area were not exercising the option to attend the school so we had to move the boundary.

Q Now, in connection with the race, predominantly speaking of the students in this additional boundary change, can you tell us whether it was Negro or White?

A Primarily Negro youngsters.

Q Since 1958, Mr. Koontz, with respect to the plant, the amount of expenditures for books, supplies, quality of teachers at Western High School, in your opinion as Assistant Superintendent, has there been any change?

A Well, we have painted the building and there has been some laboratories modernized out of National Defense Education Act money -- there have been some of those things done.

Q I show you, Mr. Koontz, what has been identified as Defendant's Exhibit 20-B. Exhibit 20-B, Mr. Koontz, is a chart which shows racial composition since 1953 of the Coolidge High School and you will note, sir, before desegregation in 1954 it was an all-White high school. In fact, you probably know it from your own experience that the population has changed since 1957 from 91.7% White and 8.3% Negro to 1965 which is now 89.7% Negro and 10.3% White. I ask you, sir, who was principal at Coolidge High School and who is principal today?

A Cedric Reynolds was during all that to today.

Q Is he a good, fair or poor principal?

A Superb principal.

Q With respect to expenditures made at this particular school in the last five years, any substantial change in terms of textbooks, supplies?

A No.



Q Any radical change in plant facility at Coolidge?

A No.

Q By the way, at my direction did you direct the principal of Coolidge High to take the headcount of the population as it now exists in September?

A Yes.

Q How many Negroes and White students there now?

A Coolidge High School has 131 White students, 1,541 Negro students, with a total of 1,673 students.

Q Have there been any substantial boundary changes at Coolidge in the last six years?

A No.

Q With respect to Western High School, Mr. Koontz, again, at my direction did you direct the principal of Western High School to conduct a headcount of Negroes and White students at Western?

A I did.

Q Will you tell us as of the date of your testimony what the number of Negro and White students are?

A Number of Negro students are 804 out of total of 1377.

Q Have there been any substantial boundary changes other than 16th to 14th Street boundary changes you mentioned before?

A No substantial changes.

Q I show you Defendant's Exhibit 20-G, Mr. Koontz, which is again a chart showing a comparison between White and Negro students at Ballou High School since 1960. When was it first constructed?

A Opened in '60.

Q You will note, Mr. Koontz, that in 1960 the number of Whites by percent was 64.3; Negroes 35.7, and as of 1965 it was 76.1% Negro and 23.9% White. Now, sir, have you had a head count made of the number of Negro and White students at Ballou as at the time of your testimony?

A At your direction the number of White students are 225; number of Negro students 1,275 for a total of 1500.

Q Any substantial boundary changes in Ballou High School since 1960?

A One boundary change.

Q What year?

A I think that was made in 1963.

Q And what was the change concerned with?

A It was the change came about because of the increase in enrollment to the point of having to put the Sousa Junior High School on double shift if we left 9th grade in Sousa, so we moved the 9th grade out of Sousa into Anacostia High School and Anacostia High School-Ballou; boundary at that time was changed so I could accommodate the increase in enrollment in Anacostia and I shifted some area into Ballou.

Q Who is the principal of Ballou?

A Joseph Carlo (phonetic spelling.)

Q Is he good, fair, or poor?

A A good principal.

Q Any efforts to integrate the staff administratively or teacherwise?

A The staff and faculty have been integrated since the school opened.

Q The facility is only open six years?

A Opened in '60.

Q Any difference in expense on materials, books, supplies, etc., with respect to other high schools in the city?

A All based on pupil population.

Q I show you, Mr. Koontz, what has been identified as Defendant's Exhibit 20-A. This is a racial break-down of the student population at Anacostia High School since 1953 and you will note, sir, prior to 1954 it was a totally White school population. It remained reasonable balance of 74.2% White, 25.8% Negro till 1959. The change now has brought us to the point where it is 73% Negro and 27% White. Now, sir, at my direction did you make a head count with respect to the time of your testimony?

A Anacostia has 1318 Negro students, 255 White students for a total of 1573.

Q Has there been any change in plant facility at Anacostia in the last four or five years?

A We had made an addition to Anacostia in early '59 or '60 which improved the facility.

Q And you spend the same amount for textbooks and supplies?

A Per pupil expenditure.

Q Has there been any radical change in teaching faculty or administrative staff at Anacostia?

A No.

Q Now, sir, after the 1954 Supreme Court decision that you are well aware of, the school system was desegregated. I would ask you if there were any drastic changes in high schools by virtue of changes in racial population at any other high schools in the city in the three or four years post dating 1954?

A In the first years of desegregation several high schools changed from predominantly White to predominantly Negro schools very quickly. Roosevelt, Eastern, McKinley were the three schools made rapid changes.

Q Are there presently efforts on school administrations to try and stop this change in racial populations of some of these schools?

A We are preparing a proposal for submission under Title III of the Education Act in an effort to maintain an integrated school and community in the Western area. This involves Western, Francis, Gordon, and Jefferson. This is the Wise proposal I mentioned earlier.

Q Until now Mr. Koontz, based upon your experience and these posters have you formed any opinion as to the degree

of change in racial populations of schools and if such change has come about and when do they do so?

A Well, we have studied the population trend and movement in the city very carefully. It seems to be that when a student enrollment in a particular school gets something over between a third and fifty percent there is a rapid movement of Whites out of the community at that point.

Q Now, is this a social phenomenon or due to any change in school operations.

A I think social --

MR. KUNSTLER: Your Honor, I wonder if the witness can answer whether it is social or phenomenal.

THE COURT: I'll sustain the objection.

BY MR. REDMON:

Q To the best of your knowledge, Mr. Koontz, is it due to the function of the school or the way the school is operating?

A You will have to state that again for me.

Q To the best of your knowledge, Mr. Koontz, is this change in racial population due to any change in the operation of the particular school?

A No.

that zone, can you tell us whether it is predominantly White or predominantly Negro?

A It is a predominantly Negro area.

Q Does the zone encompass both Jefferson and Randall?

A The red boundary here is eastern boundary of Jefferson. It encompasses both Jefferson and Randall.

Q Is Randall predominantly a Negro high school?

A Yes, it is.

Q How about Jefferson?

A Jefferson is predominantly Negro junior high school also.

Q Now, with respect to the teachers in the junior and senior high school level, Mr. Koontz, is there any in-service training taking place with respect to the further education of a teacher?

A The school system has a large in-service program which we operate out of the District of Columbia Teachers College. The courses offered in the in-service program are designed specifically to help teachers become better qualified to teach in our schools and I don't know what the enrollment

is this year. Paul Cook, president of the Teachers College, could supply that information.

Q With respect to any particular programs at some of the city's colleges, has the administration done anything with respect to assisting them in setting up these programs?

A Well, we work very closely with Catholic University in setting up of their special education program. Our office I know is deeply involved in this.

MR. REDMON: Your Honor, indulge me for a moment. I have no further questions, Your Honor.

THE COURT: Your witness.

MR. REDMON: If Your Honor please, at this time I will move for admission of Exhibits 47 thru 51 into evidence.

DEPUTY CLERK: Thru 50.

THE COURT: What is the motion?

MR. REDMON: I move the admission of Exhibits 47 thru 50 into evidence.

THE COURT: All right, sir.

MR. KUNSTLER: I would like to reserve my objections, Your Honor.

(Defendant's Exhibits 47 thru 50 previously marked for Identification were received in evidence.)



P R O C E E D I N G S

MR. CASHMAN: Your Honor, for the defense we would like to call Doctor Joseph M. Carroll.

Whereupon

JOSEPH M. CARROLL

was called as a witness by the defense, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CASHMAN:

Q Mr. Carroll, would you state your full name, please?

A Joseph M. Carroll.

Q Mr. Carroll, what is your occupation?

A I am the Assistant Superintendent for General Research and Budget and Legislation for the District of Columbia Public School System.

Q Mr. Carroll, how long have you been so employed?

A A little less than three years, three years in December.

Q Are you a native of the District of Columbia?

A No, sir. I was born in Montana and spent twenty-five years there. I have worked in other states.

I came to the District from outside.

Q Mr. Carroll, do you hold a B.A.?

A Yes, sir, I hold a B.A. from Northwestern University

in Business Administration.

Q Does your education also include a Master's degree certificate?

A Yes, sir.

I have a Master's degree in education from Harvard University.

Q Mr. Carroll, does your education include a Doctorate's degree?

A Yes, sir.

I have a Doctor's degree in educational administration from Harvard University.

Q What was your major in the acquisition of your Doctorate's degree?

A It was in the administration of schools. It was in educational administration as against an academic or research Doctorate.

Q I see. Thank you.

Now, have you held positions prior to your present occupation in the educational field?

A Yes. I was a teacher in high school for four years in Montana.

I spent five years at the Newton, Massachusetts, Public School System in school business administration.

time I was there -- or should I say part of the time I was there -- was the present U. S. Commissioner of Education, Harold Howe.

Q I see.

Now, could you kindly describe to the Court what your present job entails?

A My -- there are three functions: general reserach, budget and legislation.

I have the responsibility over the gathering of the general statistics gathered by the school system.

I have responsibility also for the Finance Office -- I have had over the last year.

I have had the major responsibility for budget preparation, which takes it all the way from the beginning of the budget process through the testimony presented at Congress in justification of the budget.

I do special studies on occasion when they are required for the school system.

Q Now, Mr. Carroll, what is the present operating budget of the District of Columbia School System?

A The present operating budget -- well, the operating budget for 1967 hasn't passed yet -- the operating budget in 1966 was \$75,000,000 from District funds and about \$15,000,000

from non-District funds -- Federal sources.

Q So that would --

A Approximately \$90,000,000 in total.

Q Where is the 1966-67 budget now for the District schools?

A It is presently -- we just finished our justification before the Senate Appropriations Subcommittee -- of Appropriations, chaired by Senator Byrd, and it is being considered by them at the present time.

Q In what amount is that budget?

A The request is for 82 -- about 82 and a half million dollars in operating expenses.

The request for capital budget is \$32,000,000 approximately.

Q I see.

Now, do these two figures include the supplemental monies that come to the District of Columbia by virtue of special Congressional enactments?

A No, sir. For example, if the salary legislation pending before Congress passes, there will be additional funds coming to the school to cover the increased costs of the salaries.

A I see.

Could you let the Court know then if the present

budget that is pending before Congress is enacted, what would be the total amount of the District operating budget for 1966-67?

A Assuming total approval of our request, it would be \$82,000,000 from District funds and \$15,000,000 from non-District funds, about \$97,000,000.

This is an estimate for the non-District funds because there the bills pending before Congress will affect the allotment to the District also.

Q I see. Thank you.

Now, you mentioned two different figures. You mentioned a capital outlay figure.

Would you indicate to the Court, Mr. Carroll, what you mean by capital outlay?

A Capital outlay includes the funds for the construction of new buildings and additions to buildings and also includes a sum called permanent improvements which is for the major renovations, such as if you were to replace an entire electrical system in the school or major plumbing overhaul, a new boiler, that would be included in the capital outlay figure.

Q Now, what is encompassed by the operating expense figure?

A These are the recurring costs that recur from year to

year such as teachers' salaries, custodial salaries, superintendent's salary, and mine; and also the text books, work books, etc.; the heating of the building, the lighting of the building, the transportation of handicapped children, free lunches, etc.

Q Now, in addition to the funds that come to the system, that is, the District School system, from the regular D. C. appropriation from Congress, you indicated a figure, I believe, of about \$15,000,000 for the year 1965-66, which was approximately \$15,000,000.

Is that correct?

A Yes, sir, that is correct.

Q Would you indicate to the Court the sources that make up this funding?

A Yes, sir.

May I refer to a document here?

Q You may.

A We receive in vocational education about \$669,000; the National Defense Education Act of 1958 provides about \$345,000; the national school lunch program, \$163,000; and we have a milk program which is about \$1,042,000; the model school project which is funded from United Planning Organization grant, \$632,000; the impact aid, which is Public Law 874, provides us with about 4.3 million; the Elementary and

Secondary Education Act of 1965, all titles, provides about 6.3 million; the Manpower Adult and Training Act provides us about \$615,000; adult basic education program, \$151,000; and then we have what we call the 1-B program, which is a work-study program for children 16 years and over who have dropped out of school, which provides about \$780,000; and a 1-C program which is a work program for college students who come from poor families, which is about \$36,000 or \$37,000.

These total to about \$15,088,000, sir.

Q Mr. Carroll, would you indicate to me, please, which of these sources -- which are the two major sources from which you derive funds?

A The Title I, actually, of the Elementary and Secondary Education Act, provides us with about five point -- \$5,000,000; and the impact aid funds, which was about 4.3 million dollars; these are the two major sources of funds.

Q Would you tell the Court what the purpose of impact aid funds are?

A The impact aid funds apply -- are given to school districts all over the country and have been given to them since the late 1940's.

The funds were to be granted to the District to compensate for the numbers of people who work on Federal

properties which do not contribute to the tax base which supports schools.

The District of Columbia was included for the first time in this program in 19 -- fiscal 1965 and our funds were given to us under rules which were different from that applied to any other district in the country.

Q Would you explain the differences in the application of the rules to the District of Columbia under impact aid as compared to the application of those rules to the states?

A These funds were -- in the conference report -- in the conference report in the Senate and House Committees, it clearly indicated that within the realm of administrative -- good administration, the Committees wish to have these funds concentrated in the schools that served the deprived attendance areas of the District of Columbia.

Q Sir --

A This is not the case in other school districts.

Q I see.

Is that the direction in which these moneys flow?

A Yes, sir, that is the direction.

Q Now, would you indicate to the Court what Title I of the Elementary and Secondary Education Act concerns itself with?



A Title I concerns itself with funds for the -- I can almost quote the guideline from this -- to provide for the educationally deprived children in areas of highest concentration of low income.

In other words, we are to concentrate these funds on the most deprived areas, attendance areas of the city.

Q What was the figure that we received under that enactment?

A Last year's figure -- the year just completed -- was 5.5 million dollars.

Q Now, when did the District of Columbia first become eligible for ESEA funds under Title I?

A This was last year we actually -- in the fall of last year we were able to begin to spend these funds.

Q I see.

So that was the first time --

A That was the first time all over the country, the Elementary and Secondary Education Act of 1965.

Q Thank you.

Now, would you outline to the Court in general form what uses are being made of the funds under Title I of ESEA?

A The funds -- there are a number of programs. Our basic purpose, of course, is to -- our major programs would be

in the area of pupil personnel services, teacher aides, and we have some special projects.

Let me elucidate a little.

We have a stay school, which is operated --

THE COURT: Would you spell that?

THE WITNESS: S-t-a-y.

This is a school for returned drop-outs, people who dropped out of our schools who now have jobs during the day and wish to return to school at night to get their diploma.

It runs, you might say, on the second shift in one of our local night schools and it serves people who have dropped out of school already.

We have about 800 students, I believe, enrolled in that program this fall.

We have a program established -- special pupil personnel service teams -- teams of psychologists; we provide a psychiatrist; we have what we call pupil personnel counselors who work on identified children within these ~~deprived~~ attendance areas whom we feel have shown evidence of lack of success in school and probability of school failure.

Q Who identifies these children?

A These children are identified by -- first, by teachers and principals recommending them for inclusion in these special

-- for these special services and then the selections are reviewed by the Department of Pupil Personnel Services to see if they agree in their selection.

Q Once identified, what aids are given to the children, if any?

A Well, these children, besides the direct counseling and psychological assistance can actually receive such things as personal clothing, such as if they don't have shoes, which often occurs, we can buy shoes for these people with these funds; and if they don't have a coat in cold weather, we can get a coat; We can get a hearing aid or we can get glasses for them.

Whatever personal necessity demands in order for that child to attend school successfully, we have funds set aside for that purpose and this is within the guidelines for that Act.

Q I see.

Now, Doctor Cartoll, you indicated that there were teams that were used in pupil personnel services.

What teams are they?

A Well, we call them teams. They are groups of persons who are employees who have confidence -- they are clinical psychologists; they are social workers; they also include some

aides who come from the neighborhood, who know the neighborhood, similar to perhaps the poverty program's neighborhood workers who have access to homes and access to the confidence of people there so that we can find out what really is the problem at home that sometimes stops students from working effectively in school.

This program is directed by Mrs. Davis, who is the Assistant Superintendent for Pupil Personnel Services.

Q Now, are these teams over and above the regular teams that correspond to the description you have just made.

A Oh, yes. These teams are to concentrate on the specifically identified educationally handicapped children in the deprived attendance areas that we have identified.

This is their sole function.

Q Would it be fair to say then that the Title I funds are directed to those children within the system who are most educationally deprived?

A Yes, sir, it would.

Q Now, earlier reference has been made to the Webster School for Pregnant Girls, and it has been fully described, Doctor Carroll, by Mr. Koontz, who preceded you on the stand.

I just want to know whether or not that particular school is one that is financed under Title I?

A Yes, sir, it is. I should say it was financed initially from impact aid funds and then we were able to expand that school with Title I funds because more funds were available.

Q Now, you have mentioned the ~~state~~ <sup>my</sup> program, and that has been described to the Court, but [I am going to ask you about the Urban Service Corp.

Would you indicate what that is and what function it serves?

A The Urban Service Corp is a special -- it is an organization within our school system, headed by an Assistant Superintendent whose sole function is to attract community -- volunteer community people who are interested in schools to do special tutorial and helpful work in the schools, to tutor the students who are having difficulty in one of their major occupations.

They also administer the money that we have to supply the children with clothes and eye glasses, etc. That is under the direction of the Assistant Superintendent for Urban Service Corp, Mr. Ben Henly.

Q Is Mr. Henly a Negro or is he a white man?

A He is a Negro.

Q Now, you mentioned the use of aides and is this

a-i-d-e-s?

A Yes, sir, it is a-i-d-e-s.

Q These are persons?

A Yes, sir. They are persons -- I mentioned them in connection with the pupil personnel services.

Q We also provide aides in the schools -- so-called Title I and target schools.

We provide about 360 classroom aides, which will allow -- take certain routine work off the teachers and allow the teachers to concentrate more efforts on the children in the classes and we hope provide more effective education as a result.

Q I see.

Are these aides paid?

A Yes, sir. They are employees of the Public School System.

Q Are they full-time or part-time?employees?

A They are budgeted as part-time employees and I believe x they, for the most part, are. They could be hired as a part-time employee.

Q Is this again financed by Title I of the ESEA?

A Yes, sir, it is.

Q Do you have any idea of what the cost is for the

360 or so aides that you have mentioned?

A It is I believe a little in excess of one and a half million dollars. Yes, about one and a half million dollars.

Q Now earlier mention was made in this trial, Mr. Carroll, of the reading incentive program highlighted by the free paper back book program.

Does this again fall within the realm of ESEA under Title I?

A Yes, sir.

That is financed from the Title I funds.

Q How much money did we receive last year under the National Defense Education Act? Do you know?

A About \$344,000.

Q Could you indicate to the Court in what direction that money flowed?

A Those funds are primarily for the certain subject matter areas: science, mathematics, foreign languages, and reading, English and social studies.

It is to improve the quality of instruction in these areas and provide equipment needed for these particular instructional programs.

The majority of the -- they have three level areas there. Title III, and I am referring to Title III in this

case, provides these funds for the improvement of instruction in subject matters I indicated.

Title V of this NDEA provides support for counseling and testing and Title X of the National Defense Education Act provides funds to improve statistical services.

We have participated in all three of these, but the majority of the participation has been in the Title III.

These funds require matching funds from the District budget in order to receive them.

Q And matching funds on what proportionate basis?

A On the one to one basis, one dollar to one.

There is a small exception in Title V which isn't significant.

Q Now, what kind of testing is done under Title V that we have employed in the District of Columbia? Do you know, Doctor Carroll?

A I don't have detailed information of the testing. I should point out that the system-wide testing is not under my direction, my office, but I am sure that the standard tests which we give the fourth and sixth grade are supported at least in part from these funds.

Q Now, let's return to the ESEA categories that we have not explored.



Title II is a funding for what purpose under ESEA?

A This is funding for library resources, entirely books and magazines, could be records also, and we -- may I say at this point that these funds are not strictly for public school students, but can include the non-public schools as well and we, in this particular case, have established targets for the -- as the number of books per pupils in an -- let's say, in an elementary school.

We have made a complete inventory of all the books in all of the public and non-public schools which participate in -- we are using these funds to build library collections up to the standard level.

This is our first target.

Q How much money have we received in '65 for that purpose?

A I believe it is about -- very close to \$300,000. I don't have a precise figure here.

Q Now, under Title III of the ESEA, what is the purpose for which funds are made available under that Title?

A This is for innovative educational programs.

This is called guidelines to accelerate change in education, projects to accelerate change in education.

The \$420,000 was allotted last year to us for this

purpose and we have an educational resource center approved under these funds. This is essentially to develop and strengthen our in-service training and also the availability of educational materials, not just the availability of the materials but also the opportunity to see new kinds of equipment, new kinds of instructional systems used.

We have other projects which are pending before the Title III group at OEO -- not OEO -- excuse me, Office of Education, and if these are approved well, we will have a number of other projects underway this year.

I should say that these are not by the guidelines restricted to any particular portion of the system. They are primarily to improve instruction across the board and we cooperate with the non-public schools in this area also.

Q Title V of ESEA concerns itself with what educational purpose?

A It is to strengthen the state administration of education.

We are considered a state in this regard and we we received about \$130,000 to strengthen our administrative structure.

Q Now, Title IV is concerned with what purpose?

A Title IV is a research Title.

In this particular case the Office of Education wished to emphasize regional testing labs or educational laboratories and under the direction -- I might say as one of the initiators, Doctor Hansen was one of the initiators of this effort.

We have combined our efforts with Delaware, Maryland, West Virginia, and Virginia and the District to form the Central Atlantic Regional Educational Laboratory. This has just begun. The executive director was appointed I think only a month or two ago and this will in effect combine the efforts of these states in studying new and improved ways to educate.

Q Now, Doctor Carroll, can you tell me where this laboratory will be located?

A I believe at the present time they have an office in Alexandria, Virginia.

I believe it will probably be mainly located there. It is just in the organizational phase at the present time, however.

Q Doctor Carroll, in preparation of the District of Columbia School Budget, you have described the part that you play.

Would you tell the Court when you begin your efforts in that direction.

A Yes. Let me put it in context.

We begin preparing the budget for the school year which will begin in July 1, 1967 and end on June 30, 1968, about February of this year, which is at least 15 months before the year begins, probably far longer.

We begin by obtaining requests from the field which in effect come through the various assistant superintendents in the school system and there is a period in which we review these requests in my office in detail and assure our -- assure myself that I feel the requests are justified and proper, and also to put them in balance.

For instance, if one person makes a request, we have to make sure that we have considered the request on the facilities side or on the equipment side, to make sure that these are balanced requests -- planning, in effect.

Then we take these requests which we tabulate and we list all the requests that come in regardless and then we list the ones that we recommend for inclusion in this case in the 1968 budget and we have a staff meeting with the superintendent and the staff present, and we go through item by item each of these requests and above all we try to make sure that we have some type of thrust and that this is a coordinated program.

Then is the ultimate result, Doctor Carroll, the decision that is made by Congressional action upon the proposed President's budget?

A Would you give me that question again?

Q Yes.

Is the actual figure that you receive the amount that Congress approves?

A Yes, sir.

Q As your portion of the Federal budget?

A Yes, sir.

We receive the amount that Congress approves for us.

Q Then the process begins all over again for the new year?

A Usually it has already begun.

Q Now, Doctor Carroll, could you tell me, please, what per pupil expenditure is?

A Per pupil expenditure is a normative figure rather widely used.

It involves the cost of all the operating costs for a particular school year divided by the number of pupils who were served during that school year.

The number of pupils can be the pupils in average daily membership or average daily attendance --

Q Now --

A We usually work it in both ways.

Q Now, is this figure, per pupil expenditure, by school system, by high schools or by individual buildings?

How do we keep the figure?

A We have always kept it, and other school systems I have been acquainted with, have always kept it on a system wide basis.

This is the only way I have seen this kept, that has been on a system wide basis.

Q And the District of Columbia keeps such figures down to each individual school building, is that not so?

A Not as a regular study, sir.

We do not usually have -- we don't calculate per pupil cost on a building by building basis.

We only calculate it for the system as a whole, which is the custom across the country, as far as I know it, sir.

Q I see.

Now, let me ask you this.

You said that the figure is calculated on an average daily membership basis?

A It is calculated on two bases, average daily membership and average daily attendance.

A I prefer the ADM use. The reason for this is that if a student is absent 20 days during the school year, which I think would be quite a bit of absence, we still have to provide a teacher. We have to give him a textbook. We have to have a school for him.

We have to provide a custodian for that school.

We have to have all the supporting costs and services and the fact that he is absent for a few days or quite a number of days really doesn't relieve the cost of operation in any substantial form.

Q Doctor, could you tell me the elements of calculation that go into the per pupil expenditure figure in the District of Columbia?

A Yes.

The District of Columbia per pupil expenditure figure would include the cost of administration, the cost of supervision and instruction -- when I say cost in these cases I mean the office supplies. I mean the textbooks. I mean all of the supporting costs include the retirement benefits.

We would have the operation of the buildings, the heat, the light, the telephone, all of the recurring costs that I referred to in the operating budget.

I can answer it better by saying: What would be

excluded?

We would exclude adult education.

We would exclude the cost of the operation of the Teacher's College because these would not be comparable to that of other school systems and it is not included in the formula that we use to calculate our per pupil costs.

Q Now, does this calculation include then the factor of teachers' salaries?

A Oh, yes. This is the major factor in the per pupil cost.

Q Would you indicate again to the Court what our operating cost was last year?

A \$75,000,000 from regular District funds. Now, these are budget figures. And about \$15,000,000 in non-Federal. This makes a total of about \$90,000,000.

Q Of that operating cost, would you indicate to the Court what percentage teachers' salaries played in that amount.

A Approximately 75 percent of all costs are strictly teacher salaries. Now, I say teachers' salaries -- approximately 75 percent would be the teacher salaries, and in this I must include supervisors and others paid under the Teachers' Salary Act.



Q Now, if you included the salaries of others than teachers, for instance, the salaries of custodial people, of administration people, what percentage of salaries then would the operating cost of the system amount to?

A I have a rather precise figure on that. I believe it is 89 percent of the \$75,000,000 last year went for salaries, a little over 89 percent.

These are salaries of all kinds.

Q Now, would you explain to the Court what effect under-utilization of a school would have on per pupil expenditure?

A An under-utilized -- under-utilization of plant would cause the per pupil cost to rise, because you would be dividing -- because of the many fixed costs that go into the operation of a building, and, therefore, you would be dividing the same cost by a smaller number of students and that would increase the per pupil cost.

Q Now, is the per pupil expenditure figure a good measure or a useful measure of the allocation of resources?

A No, sir. It is not a good measure of the allocation of resources within the system.

Q Why do you say that?

A The major cost factor in the operation of a school

are salaries, as I indicated, about 89 percent, and more precisely teachers' salaries, which I indicated would be about 75 percent.

We do not allocate personnel around the system on the basis of the salary which is paid to them -- that we pay them.

For example, a teacher can be paid from \$5,350 right now, to \$10,050.

Now this is for the same job, the classroom teacher.

This varies 90 percent.

Now, we don't allocate this major resource between schools on the basis of the amount of money paid for them. Therefore --

Q Let me interrupt you, and ask you this.

Are you saying that a teacher performing the same job may receive \$5,300 or did you indicate \$10,050?

A They could. A teacher performing the same job, for example, a third grade teacher -- two third grade teachers next to each other in the same school, one can be paid \$5,350. Another could be paid \$10,050.

Q Well, what would account for such a vast difference?

A The traditional salary arrangements in schools have been that you start teachers at a lower level and then

they work up and we compensate, in effect, for their loyalty, staying with the system over the years.

A teacher with 18 years of experience could receive \$10,050 in the District of Columbia schools.

This is a traditional -- it varies in detail, but this is a traditional way of paying teachers all over the country on this salary scale basis.

Q Now, teachers' salary, accounting for so much of the operating cost, may I ask you if we distribute teachers within the school system on a salary basis?

A No, sir. We don't do it here and to my knowledge -- I am sure I am correct -- we don't do it anywhere else in the country either.

Q Why is that?

A Because the factors which are important to education of children in the assignment of teachers is not the salary.

The factor could be balanced program. For instance, if you need a Spanish teacher and you happened to find a new teacher who was available to teach Spanish, you are not going to deny that school a Spanish teacher because she happens to come in at a lower level than you want.

She starts at the beginning salary.

We also may have factors of sex even. You want to

have some men -- male teachers in the elementary schools, if possible, particularly in the fifth and sixth grades, so you may wish to have a man in a location and you would try to find a male teacher. You wouldn't be concerned with the salary -- the placement on the salary scale. You would be concerned with his qualifications in his particular specialty of teaching.

Q Does stability of staff play any role in the observations that you have just made, Doctor Carroll?

A Yes, sir, it does.

A principal and a staff, like any other organization, becomes a working unit when they understand each other and when they understand the community and their schools, so it is not desirable to move staff around in order to balance salaries and break up a good working relationship that has developed within a school.

This would be mal-administration and I think it would be considered this by virtually every school administrator I have ever met.

You do not move staffs around unless there are good reasons.

The salary level is not the reason to do this.

Q Now, Doctor Carroll, is moving by salary level done

in any school system of which you are aware?

A No, sir, it is not.

Q What would, in your mind, be a better calculation of the allocation of resources other than, say, per pupil expenditure?

A I would use a primarily human accounting.

Q Would you describe that, please?

A The number of professional staff for a given number of pupils.

This is much better and I would say among the people working in this area it is a much more -- it is a later concept, but a much better concept for studying the allocation of resources in the school system or between school systems.

For instance, if a school system has 40 professional staff per thousand, but happens to have a high cost area like New York State, it may be actually providing less support to students than a school system which is in a low cost state but has 45 or 48 professional staff per thousand actually applied.

So that when you use professional staff per thousand you eliminate the effects of the economy, the salary levels in various areas of the country, and other factors, and it is a much more effective way of judging the allocation of

resources.

Q Did there come a time, Doctor Carroll, when you were called upon to give a formal analysis of per building cost variations among public schools in the District of Columbia?

A Yes, sir, there was.

Q When was that?

A That was about two years ago, 1964, in July I believe.

Q Before whom was that presented?

A That was presented to the Board of Education, District of Columbia Board of Education.

Q Do you have a copy of that with you?

A Yes, sir, I do.

MR. CASHMAN: May this be marked?

THE DEPUTY CLERK: Defendant's Exhibit No. 51 marked for identification.

(Dr. Carroll's report marked as Defendant's Exhibit No. 51 for identification.)

MR. CASHMAN: Your Honor, I have a copy of it which I can present to the other side for their convenience while we are consulting it.

THE COURT: That will be helpful.

BY MR. CASHMAN:

Q Doctor Carroll, it bears the date July 1, 1964.

A Yes, sir.

Q Can you indicate to me what gave rise to this study?

A One of the members of the Board of Education requested from the Finance Office certain data about the cost of schools.

This data was indicated to him in accessive range of per pupil cost among the various elementary schools in the District.

He raised the question at a Board meeting and I was requested to make an analysis of this data and report to the Board.

Q Now, did you actually prepare this document?

A Yes, sir, I am totally responsible for this document. I wish to point out that a tremendous amount of detail work went into this and was done by others. It was done by Mr. Harry Merican, M-e-r-i-c-a-n, in terms of the tabulation of the data, but the actual report written here and the results, I am totally responsible for and I am prepared to defend it.

Q Doctor Carroll, the figures upon which this document is based are for what year, please?

A For the 1962-63 school year, which at that time was the last complete year of data which we had available.

Q These figures concern school population, they concern expenditures for salary, for a maintenance cost, for utilities and miscellaneous expenses, do they not?

A Yes, sir, they do.

Q And these figures are figures that are kept in your office, are they not?

A These figures are kept in the Finance Office which is one of the offices under my direction.

Q The figures are kept as a part of the regular course of the business conducted by the Finance Office, is that not so?

A Yes, sir, they are kept by category, not in total.

Q Now, in connection with the study that you made, Doctor Carroll, what method of calculation did you use in coming to a per pupil cost?

Did you use AD--

A ADM.

Q ADM?

A ADM figures.

Q Now, you have already indicated to the Court that salary is not a consideration used in assigning teachers for the reasons that you have explained.

I would like you to tell me why the gross comparisons



of costs between school building expenditures are not a useful figure for the purpose of allocation of resources.

A The gross cost per pupil between buildings is not a useful measure because the method of assigning or allocating these resources -- let me start over -- because the salaries represent the dominant factor in the per pupil cost and we do not allocate the salaries of people around the system on the basis of salaries.

Therefore, since salary is not a factor in the assignment of staff, and this is such a dominant part of the per pupil cost figure, it follows that any gross comparison of these figures cannot be useful in determining how management decisions were made.

Q Well, how about the observation that you will find better teaching where you will find higher teachers' salaries?

A This has no validity or little validity in my opinion.

The reason is that we pay teachers more primarily because of recognition of loyalty in service and after a few years -- perhaps the first year and the second year are a little rougher on a teacher -- after a few years there is no demonstrable difference in the quality of teaching on the basis of their level in the salary scale.

Q Now, in connection with the preparation of this document which is before you, from what base are these calculations drawn?

A From what base?

Q Yes.

I mean, what sampling of the schools did you use as the first basis from which you made your judgment about this study?

A The initial step in this study was to take the various elements of cost which are shown in this -- may I refer to the document?

Q Yes, you may.

A Shown on page 3 of the document, and to take every elementary, junior and senior high school -- not just elementary -- in the District and to determine the cost of the teachers' salaries, custodial salaries, officers' salaries, clerical salaries, substitute salaries, maintenance costs, and utilities and miscellaneous expenses.

We found the cost allocation of funds to each school in the entire District of Columbia and we -- by elementary, junior and senior high -- we ranked the per pupil cost from top to bottom and then we broke these into tenths or deciles, if you will, and we selected the top 20 percent in terms of

per pupil cost shown by this measure --

THE COURT: Just a minute. Mr. Marshal, get the witness some water.

THE WITNESS: Thank you, sir.

I was about to ask for it.

We have taken the top 20 percent and the bottom 20 percent which represent the extremes of per pupil cost, the highest cost and the lowest cost, and we compared these extremes on the elementary, junior, and senior high, to try to find out what were the differences in the cost factors in teachers' salaries, for instance; custodial, and all these various areas, and we analyzed to see what actually caused the difference between the high cost school and the low cost school.

MR. CASHMAN: Your Honor, I am sorry I don't have a copy for the Court.

I think it might be of some advantage for the Court to have one.

THE WITNESS: I might have an extra one, if I could look.

MR. CASHMAN: May we look, Your Honor?

THE COURT: Would you look?

MR. CASHMAN: I furnished one copy to the other

side. I think it might be helpful.

It is about a 14-page document, Your Honor, and it does contain tables and it might be easier for the Court to follow.

THE WITNESS: I am sorry. I don't have one.

THE COURT: Go ahead. I will follow as best I can.

MR. CASHMAN: Very well, Your Honor.

BY MR. CASHMAN:

Q Now, you indicated that you contrasted the upper 20 percent of schools at both the elementary -- each of the elementary, junior and high school levels with the lower 20 -- with the lowest 20 percent of the schools in each of those categories?

A Yes, sir. Because of the small number of schools, for instance, on the senior high, I used three schools in the senior high, three highest and three lowest, and since there were only eleven schools, I felt this gave us a better sampling than to use just two, so it was essentially the upper 20 percent or 25 percent, if you will.

Q All right.

Now, with respect to the elementary schools, what was the average cost factor for the upper 20 percent of schools at the elementary level, using the school figures for the

year 1962-63?

A This is shown on page 4 in Exhibit 1.

The upper 20 percent schools in the elementary level had an average cost of \$383.47.

This is an arithmetic average, not a median.

Q Now --

A Which I explained -- the reason I say that is because it gave the greatest weight to the extreme of the highest cost score is the reason.

Q I see. Thank you, Doctor Carroll.

Now, what was the figure or the corresponding figure of cost, total cost, for the lowest 20 percent of the schools at the elementary level?

A \$243.63.

Q Now, can you indicate to me what the actual difference was between those two figures?

A \$139.84.

Q Now, in terms of the per pupil cost difference at the low cost school, what was that figure, if you will?

A The per pupil -- will you give me that question again?

Q I want the percentage of low cost schools.

A The low cost schools as a percent of the high cost school was 57.4 percent.

Q Now, in connection with the total cost figure that you gave for the high cost school and the low cost school, what elements went into figuring that total cost figure?

A The teachers' salaries, the custodial salaries, officers' salaries, clerical, substitute, maintenance cost, utilities and all miscellaneous costs.

Q Now what factor was the teachers' salaries differences as a percent of the total difference between the high cost school and the low cost school?

A It was 59.7 percent -- 60 percent, but the difference was accounted for by teachers' salaries alone.

Q Now, would you kindly indicate to me what the total salary difference as a percent of the total difference was?

A This would be over 70 percent of the total difference.

Q Now, I am going to ask you to kindly refer to your analysis of the per pupil expenses relating to the junior high schools.

A This is on page 5?

Q Yes, on page 5.

Now, what was the total cost at the junior high school level of the operating expense for the upper 25 percent of the schools?

A \$463.51.

Q What was the total cost for the lowest 25 percent of the schools at the junior high school level?

A \$342.99, almost \$343.

Q Now, would you indicate to the Court what teachers' salaries play -- what part they played as a percent of the difference between the high cost schools and the low cost schools?

A 57.4 percent in the case of junior high schools.

Q Now --

A That was teachers' salaries you asked?

Q Yes, teachers' salaries.

Now, how does the teacher salaries figure as a percent of the total difference at junior high school compare with that figure at the elementary school?

A Very close. One was 60 percent, approximately, and the other was 57 percent, so it was very consistent.

Q Now, would you indicate to the Court what part in percent of total difference did the total of all the salaries play at the junior high school level?

A A little over -- a little over 75 percent.

Q Now, Doctor Carroll, I am going ask you to kindly refer to your table on page 6 that makes reference to your

analysis of the same factors at the high school level and would you indicate what the total cost figure was for the high cost high schools?

A \$642.32.

Q What was the figure for the low cost high schools?

A \$502.84.

Q In terms of dollars, what difference is that between the high cost and the low cost?

A In this case it is \$139.48.

Q Now, would you indicate to the Court what part teachers salaries played as a percent of the total difference between the high cost schools and the low cost schools at the high school level?

A Teachers' salaries were 64.5 percent, somewhat higher than the other two.

Q I see.

The other two being --

A Elementary --

Q Being approximately 60 percent at the elementary level and 57.4 percent at the junior high school level?

A And 65 percent, shall we say, at the senior high level, centering around 60 percent level.

Q Now, I would like to ask you the question that I



asked you in connection with the other two levels.

Would you indicate what the total -- what percent the total salary difference played in the difference between the high cost total expenditures and the low cost total expenditures at the high school level?

A At the senior high level it was over 70 percent. I don't have that precise figure here, but that is approximately right.

Q You derive that from the figures that are before you?

A Yes, and I am low. I am a little low. It is a little above 70 percent.

Q Now, Doctor Carroll, do you explain within this document the principal factors that express the cost differences among school operating units?

A Yes, if I understand your question, yes, I do. I indicate what I think are the causes of the differences in cost.

Q Would you kindly enumerate those causes to the Court, please?

A Yes. For the convenience of all this is shown best on page 9 of Exhibit 4 of this document.

The major difference -- the cause of difference is in the size of the schools.

If you will look on page 4 you will find that these -- taking elementary -- that the high cost elementary schools have enrollment of only 338 pupils on an average.

The low cost elementary schools have an enrollment of 883.

Now, this factor of high cost having low enrollment and low cost having high enrollment is absolutely consistent with the situation in the junior and the senior high schools.

Q Well, would you give us those figures too?

A Yes. For instance, you have in the high cost junior high schools, your average enrollment is 936 while in the low cost junior high schools your average enrollment is 1,474.

On the senior high school, your high cost group was 1,051 and your low cost group was 1,449.

Now, may I point out that the difference, the greatest difference in enrollment occurs at the elementary schools.

Q Then why don't we use that then as the figure for the point that you are attempting to demonstrate?

Again, what was the average daily membership per building in the high cost group at the elementary level?

A 338.

Q What was the average daily membership per building at the elementary level within the low cost group?

A 883.

Q All right.

Using those figures then, continue.

A Using those figures you will find --

THE COURT: We will take a five-minute recess.

(Whereupon the Court took a short recess.)

(After recess.)

Thereupon,

JOSEPH M. CARROLL

resumed the witness stand and testified further as follows:

DIRECT EXAMINATION (Resumed)

BY MR. CASHMAN:

Q Dr. Carroll, in employing the figures that you have announced, would you kindly demonstrate the contention that the size of buildings is a factor that very much affects the determination of per pupil expenditure?

A Yes, sir. The high cost group of schools on the elementary, junior and senior high school, all have much lower enrollments than their counterparts in the low cost group in the elementary, junior and senior high school. Figures we have already given.

It is also, I believe, of significance that the greatest difference in per pupil cost is at the elementary level where you have the greatest difference in the sizes of the schools. In fact, the low cost elementary school is over two-hundred percent larger, or 260 percent of the low cost school in terms of enrollment.

Now, on the junior high school --

Q Excuse me. Are you saying that the enrollment

at the high cost school is 260 percent of the enrollment at the low cost schools at the elementary level?

A Yes, sir, at the elementary level.

Now at the junior high you have a smaller difference in the per pupil cost between the high and the low cost group, and you also have a smaller difference in the average size of the schools, the number of students is less.

The smallest difference in per pupil cost is the high and low senior high schools, and the smallest number of difference in pupils is between these two.

Q So that is then the correlation between those factors?

A So they correlate directly and in all ways, and, I think, logically.

Q Now would you explain to the Court how -- first of all, tell me what size of enrollment we are presently building our elementary schools to accommodate, how many children?

A We prefer to build towards about a thousand. I think the standard school is about 1,076 on the elementary level, as an example. We build our junior highs at about 1,500, and we are building our senior highs, we are aiming

at 2,500, although we have had to build them in stages sometimes, and only have one school, I think, that is really that size.

Q And Dr. Carroll, could you indicate to the Court what accounts for the average enrollment of the low cost schools at the elementary level being then 338?

A You place your new buildings in areas where you have increasing enrollments. We have, in effect, been building all our new buildings in the place where they have increasing enrollments where, I should say, in the center of the city and areas which are changing, frankly, from white to colored.

You have younger families moving in, and young families tend to move more easily, and you have larger enrollments. Therefore, your larger schools are placed there and that causes a lower per pupil cost.

Q Is there any relation then between the age of a building and the small enrollment that it may contain?

A Yes, because buildings built fifty years ago, even thirty or forty years ago, were built for a smaller area. They were built for capacities of maybe three- or four-hundred and at the time this appeared to be the best way to build schools, I assume. I wasn't there. But you

will find older buildings tend to be much smaller than buildings being built today.

Q Why are they in continued use if they are so small and present the disadvantages that you indicate?

A Well, it is a matter of no choice. The building programs have had to go where the enrollments have been increasing. We couldn't just scrap a small building which has classrooms available just because that happened to be small, because you would be leaving students without a place to sit, on many occasions.

Therefore, the greatest good required we keep these in operation, and I should say, whenever we have had to build a school in an area served by a small school, we have sought to replace that school. It's ample right now.

And before Congress we have the Blow-Pierce addition. These are two small schools, and we want to replace them with a larger school which will have greater capacity than the size of the two small ones. We have in the 1968 budget requests for replacements for some of the small schools, and if we can get the money we ask for, we will replace all of them and have larger units.

Q Let me ask you this: In terms of the figures

now that we are dealing with, that is, the average population of the high cost and low cost schools at the elementary level, does your document indicate the average age of the high cost schools at the elementary level?

A Yes, in two or three ways.

Q Would you indicate to the Court in what ways?

A The average age of buildings in the high cost group of schools was 53 years -- let me begin by saying, in the elementary schools the average age of high cost group was 53 years. The low cost group was 30 years.

Q Now would you specify what page and what table you are referring to?

A I am referring to page 9, Exhibit 4.

Q Page 9, Exhibit 4.

MR. CASHMAN: Your Honor, during the recess I procured another copy. I thought it might help the Court follow this.

THE COURT: Thank you very much.

THE WITNESS: May I continue with this response?

THE COURT: I don't think the doctor was finished his answer.

BY MR. CASHMAN:

Q Yes. I'm sorry.



A We also examined -- there were 26 buildings in each group, 26 in the high cost and 26 in the low cost group. Only one of the 26 high cost group schools in the elementary level had been built or added to since 1950. 18 out of 26 low cost schools had been added to or built since 1950.

I also point out that on line 7, that 15 of the 26 high cost group schools were constructed over 50 years ago, while only eight of the 26 low cost groups were constructed over 50 years ago.

Q Dr., what was the reason that it came out that one of the 26 high cost buildings was constructed or added to since 1950? Do you know any facts that explain that?

A No. We weren't putting additions in on that basis. I don't know any facts that explain it. That one happened to be there.

Q Would that explanation of comparison, that is, between 1 and 18 in line 6 reflect the demands that are being made on the school system by school population, where it occurs?

A Oh, yes. We are forced to try to place our schools where we have the greatest need and the greatest overcrowding. And this is the reason why the new buildings

have been placed there and where you find such a distinctly larger average enrollment in your low cost schools.

Q Now referring again to the elementary level where you would have on the average in your high cost school 338 pupils, what difficulties in terms of class size and class attendance would this present in terms of efficiency?

A I think this can best be shown by recognizing that an elementary school serves kindergarden and grades 1 to 6, which is seven age groups, if you will.

Now if you took that 338 figure and divided it by 7, you would find that it would be an average size of about 48. Granted, there will be variations, but it would be an average of 48.

Q What difficulty would the figure 48 present?

A I was getting to that.

The 48 would be too large for one class, but if organized into two classes it would average two classes of 24 pupils.

Now 24 is a small per pupil ratio for our school system. We aim at 30 at the present time. This is our objective, 30 pupils per teacher.

Now if you take your 883 and divided that by

7, you would come out with something like 120.

Q Where did you get the figure 883?

A 883 is average enrollment for the low cost elementary school.

Q Are you dividing it by the same number of groups?

A That's right. Divide by 7 and you will come out with 124 or 125, and that can be organized into four classes of about 30, 31, which are more efficient, as you can see, we have a relationship to the cost of teachers' salaries in that particular school, on a per pupil basis.

Q Now in connection with your analysis of the per pupil expenditures, did you find any factors that varied inconsistently between high and low cost school groups, and if you did, would you kindly tell the Court at what page this is explained within your document?

A I would refer the Court to page 12, Exhibit 5.

Q Now on page 12, Exhibit 5, would you indicate to the Court the factor of temporary teachers and what inconsistency that played in terms of your analysis?

A We found that in the high cost elementary schools about 24.9 or 25 percent of your teachers were temporary. While in the low cost elementary schools about

45 percent of your teachers were temporary.

Now we found that in the junior high school and in the senior high school, the reverse situation was true, that the high cost junior and senior high schools had higher number, larger number of percent of temporary teachers than did the low cost group, so that there was not a consistent pattern shown across the three levels.

So if there was any attempt to assign on this basis, you would expect it to occur across the board, all three levels.

Q I see. How about the factor of percent of non-white enrollment as being an inconsistent factor in connection with the analysis at the different levels? Would you explain that to the Court, please?

A Yes, sir. The low cost group in the elementary schools and in the junior high schools had a larger percentage of non-white enrollment than did the high cost group in those two levels, but on the senior high, you find that the high cost group of schools had a higher percentage of non-white enrollment than did the low cost group.

Q Now did you discover any other important area of inconsistency between the different levels?

A Yes. We took the 1960 Census of Population and located the schools by the census tract in which they were located, and the income, the family income in those areas.

Now we found that in the elementary schools at the high cost --

Q How many schools are we dealing with at the elementary level?

A 26 in each group. 26 in the lower group; 26 in the upper group.

Q All right.

A We found in the elementary level that the high cost group of schools tended to be located in higher income areas. We found, however, on the junior high school and senior high school, that the high cost junior and senior high schools tended to be in the lower income areas.

So we didn't find that by income this factor varied consistently between the levels.

I should point out that there were schools located in all income levels in almost all of the analyses, and that is shown there. For instance, you find high income, high cost schools in areas in which you have incomes below \$5,000, you have them in middle incomes,

and you have them in upper incomes. And this is true in most of the areas.

Q Thank you, doctor.

MR. CASHMAN: May these be marked, please?

THE DEPUTY CLERK: Defendant's Exhibit No. 52 marked for identification.

(Thereupon, map or color chart was marked Defendant's Exhibit No. 52, for identification.)

THE DEPUTY CLERK: Defendant's Exhibit No. 53 marked for identification.

(Thereupon, map or color chart was marked Defendant's Exhibit No. 53, for identification.)

BY MR. CASHMAN:

Q Doctor Carroll, I am going to show you what has been marked Defendant's Exhibit No. 52 for identification, and I am going to ask you if you can identify it for me.

A Yes, sir. This was prepared upon the request of Corporation Counsel's Office by the staff in my office and I am responsible for the contents therein.

Q And what does it purport to show?

A It shows a comparison of relationships between the non-white population and the location of school facilities

built since 1954 in Washington, D. C.

And may at this point, may I apologize for one of my staff leaving out the fact that these are elementary school facilities?

Q These relate to elementary schools?

A That is correct. These relate to elementary schools only.

Q I see.

Now, Mr. Marshal, will you mount that on the board?

(Pause.)

BY MR. CASHMAN:

Q While we are mounting that, I am going to show you what has been marked Defendant's Exhibit No. 53 for identification.

I am going to ask you whether or not you recognize that.

A Yes. This is a study of the same information but in this particular case we wish to compare the percent -- let me begin again. I should have said in this particular exhibit here, we have Health Department areas of the city which were the basis for our study, and the coloration indicates the percent of the total population,

men, women, children, in the District of Columbia, by race. In other words, yellow indicates that there are --

Q Before you get into a detailed --

A This one indicates the percent, using the same coloration, indicates the percent in school attendance. In other words, not the total, but the percent of the children in each area, total white and non-white population.

Q I see these statistical areas are statistical areas used by the Department of Public Health of the District of Columbia.

A Well, that's right. And you can see the source of the map, the Public Health, Government of the District of Columbia at the bottom.

Q These maps were prepared in your office?

A Yes. The maps were prepared in my office.

Q Were they prepared from data which is available in your office in terms of the raw data upon which it is based?

A Yes. The data is standard data collected, when was the building built, how many students in the building and what is their racial composition.

Q Fine.

Mr. Marshal, would you kindly mount the other



exhibit?

(Pause.)

THE COURT: Mr. Marshal, would you move it a little bit so counsel at the table can see it? In other words, the angle is not right.

I think that is better. Fine. Thank you, sir.

BY MR. CASHMAN:

Q Now you said there was a distinction of population between the two exhibits. Would you indicate to the Court which exhibit represents school population and which exhibit represents total population?

A The total population exhibit is represented on the left, my left here.

THE COURT: That is exhibit ?

THE WITNESS: That is Exhibit 52, sir.

MR. CASHMAN: That is Exhibit 52, Your Honor.

THE WITNESS: Exhibit 53, on the right, represents the distribution by the proportion of students in the schools in each of these areas, which are non-white.

BY MR. CASHMAN:

Q I see. Now would you explain the legend of Exhibit No. 52 to the Court, please?

A Yes, sir. May I stand?

Q Yes, sir, you may stand.

A In this particular case we have the total school population in the first number here. In the middle number here we have the number of non-white students in this area. And in the final figure, and this is not a derivative of these two, we have the percent of the students --

THE COURT: Doctor, can you keep your voice up, please?

THE WITNESS: Sorry. I will do my best.

THE COURT: All right, sir.

THE WITNESS: The third figure indicates the percent of pupils in this area which are attending schools built since 1954, new facilities, in effect.

Now these are schools completed or added to since 1954. I point out an addition almost always involves a considerable renovation and we try to make them comparable to the existing facilities.

As you can see, in this area which on this map shows it to have a total population, less than 10 percent non-white, only 17 percent of the students attend school facilities built since 1954.

In this area none attend schools, facilities,

built or added to since 1954.

BY MR. CASHMAN:

Q Doctor, may I ask you this question:

A Yes.

Q The yellow areas on the map that you are pointing to with respect to school populations, what do those yellow areas indicate on that map?

A That the total population in this area is less than 10 percent non-white. These are essentially the white areas of the city.

Q Yes. Now would you explain to the Court what the green areas represented on the same map indicate?

A I'm sorry? On this map?

Q No, on the same map.

A The green areas on the same map indicate that 10 to 29 percent of the total population are non-whites.

Q How about the blue section of that map?

A The blue section indicates that 30 to 49 percent of the total population are non-white.

Q And the lavender section of the map?

A That indicates that 50 to 69 percent are non-white.

Q And the pink or red section of the map indicates what?

A 70 to 89 percent are non-white.

Q And the brown section of the map indicates what?

A 90 percent or more are non-white.

THE COURT: Mr. Cashman, just a moment.

MR. CASHMAN: Yes, Your Honor?

THE COURT: How did you arrive at the boundaries? Maybe you stated it but I didn't hear you for each one of these sections.

THE WITNESS: The boundaries were once used by the Department of Public Health and this was the basis for the boundaries that were selected.

I should add correctly, I believe, that there was an exhibit presented previously in this court.

MR. CASHMAN: I was going to indicate, Your Honor, that these correspond to Plaintiff Hobson's breaking down of the city into statistical areas. These represent the same areas.

THE COURT: Thank you.

THE WITNESS: We felt this would give a correlation in direct comparison.

THE COURT: All right.

Thank you.

BY MR. CASHMAN:

Q Now would you indicate on the map to which we have reference, Doctor Carroll --

A This map?

Q Yes. That is the map representing the school population -- what the little tabs generally indicate, what they are supposed to represent? The tabs with the three figures on them.

A They are to indicate what proportion of the students in that area attend newly constructed or added to school facilities, or facilities added to since 1954. The percent of the students in that area attending new school facilities.

Q Now in Area I, would you kindly make reference to that map? That is what color?

A Yellow. It indicates 10 percent population non-white.

Q All right. In that Area I, there is a first figure on the tab. What is that figure?

A That figure indicates the total school population, elementary school population in that area.

Q What does that figure represent?

A In other words, the total --

Q No, the number.

A The number, 1,424.

Q I see. Now the second figure that follows that on the tab represents what?

A Represents the number of non-white students attending elementary schools in that area.

Q Would you kindly indicate to me what number that is?

A 192.

Q I see. Now the tab contains a third figure which is in red, is it not?

A That's right.

Q And that figure represents what, sir?

A That figure represents the proportion, percent of students in that area attending new school facilities.

Q Since when?

A New since 1954.

Q And when you say new, you are including new construction and additions?

A And additions.

Q And do I understand that your testimony is when an addition is made there is almost in every case a renovation made of the building?

A Yes, sir. We make a renovation of the building, try to put in additional facilities that we would have in new buildings, and so forth; bring them up-to-date.

Q In Section 1, would you kindly indicate what percent of children are enjoying the new construction since 1953?

A None.

Q I see. I am going to ask you if the tabs on the other areas, statistically defined, represent the same general explanation?

A Yes, sir, they do.

Q Would you kindly indicate to the Court the area on the map which has the greatest percentage of children enjoying the new facilities in terms of construction and additions since 1953?

A It is Area XVI, and that is, 75 percent of the facilities in this area were built new or added to since 1954.

Q And you pointed to a pink area, what does that pink indicate again?

A That 70 to 89 percent of the total population in that area are non-white.

Q I see. Could you break that figure down into actual pupils?

A Yes. There are 5,312 total elementary school pupils in this area, and 5,280 of these were non-white pupils.

Q So we will be absolutely clear as to which pink section you are referring to, is that the pink section numbered XVI?

A Yes, sir, it is.

Q Now would you kindly turn your attention to that part of the same map that concerns itself, the same map, that concerns itself with an explanation of those areas of the city that are most non-white?

A Yes.

Q What areas are they?

A Most non-white?.

Q Most non-white.

A They are generally these areas that you see brown here, for instance, 90 percent or more. You might say going right through here.

Q Now could you indicate so the record will be clear what numbered areas they are in terms of Roman Numerals?



A They are Area VII, Area XV, and Area XIV..

Q I see. Now, Doctor Carroll, what percentage of non-whites in terms of elementary school population live in those areas?

A May I check your question, the wording? You said what percent of elementary school students?

Q Yes, of elementary students.

A All right.

Q Now I am asking just for an explanation of what the brown means again.

A The brown indicates total population was 90 percent or more non-white, but does not indicate elementary school population.

Q I see. It is total population?

A Total population. We would have to use this map to get elementary school population.

Q We will refer to that map later.

A I wanted to make sure I was correct.

Q Referring to the brown areas, would you indicate what the tabs indicate on each one of the different sections?

A Yes, sir. In Area VII it indicates that we have 6,639 total students, 6,287 of these non-white, and 19 percent, 18.9 percent of these students in this area

attend school facilities new or added to since 1954.

Q Would you move to the next section, please?

A In Area XV we have 9,038 elementary students total, 8,992 are non-white students. 45.5 percent of the students in this area attend schools new or added to since 1954.

In Area XIV we have 8,820 total enrollment, and 8,798 are non-white students, and 61.1 percent of the students in this area attend new or renovated or added to facilities since 1954.

Q Thank you, Doctor. Doctor, would you refer to the map on the right which is an Exhibit marked Defendant's 53?

Now will you indicate with what population that map is concerned?

A This map is concerned only with the elementary school population and the proportion of white and non-white in each of these areas.

Q I see. Now I see that it is broken down into three generic colorings, one green, one brown, and one red. Would you explain what each color section means, please?

A These color sections are consistent percentages with the color sections that you see in this map.

Q That is Exhibit No. 52?

A That's right. In other words, the green indicates that 10 to 29 percent of the school population in that area is non-white. The elementary school population in that area is non-white. It also indicates, if I may follow, that the red is 70 to 89 percent of the elementary school population in these areas are non-white. And the brown sections indicate that 90 percent or more of the school population in those areas are non-white.

Q I see. Now the exhibit to which you are making reference contains tabs again that reflect the same things that are on Exhibit No. 52; is that correct?

A They are identical.

Q They are identical. As a matter of fact, each tab would be identical, would it not be?

A That is correct; each tab is identical.

Q Therefore, the figures would be exactly the same on the tabs, but the one map on the left, that is Exhibit 52, represents the city in terms of racial boundary by population?

A This is correct.

Q And the other map represents the city broken down in terms of children attending elementary school by race?

A That is correct.

Q Thank you very much.

MR. CASHMAN: I have no further questions of the witness, Your Honor.

THE COURT: Have a seat, Doctor.

Mr. Anker, are you ready to go on with cross examination, or would you like time to study this?

MR. ANKER: Your Honor, I would like time to study the exhibits. If we could take another witness, that probably would be the best thing.

THE COURT: Mr. Cashman, are you offering or have you offered this report which has been marked Defendant's 51?

MR. CASHMAN: Your Honor, I was going to save my motion until counsel cross examined.

THE COURT: I see.

MR. CASHMAN: Because I thought my moving it at this time might be premature since he has not had an opportunity to cross examine.

But I will inform the Court that it is my intention to move its admission after the cross examination.

THE COURT: All right.

Now, Mr. Anker, maybe we can go on with some

Q Is that the criterion you use in selecting school sites, the least expensive?

A No, but this has to be one criterion that you use when you are thirty-five per cent over capacity and you just need a school a lot of places in the City.

Q Do you take into consideration the integration factor, the fact that a school in a different area might have more of a white or a better white-non-white percentage in it? Does that cross your mind at all in the planning of these sites?

A It has never to my knowledge been the primary consideration in the location of a school site.

Q Has it been any consideration?

A We have given this consideration in the selection of school sites.

Q Was this discussed at all in connection with the proposed Rabaut?

A We discussed this.

Q Who discussed it?

A My staff discussed this in my office at the time of the selection of this school site.

Q Now, who was present at those discussions?

A I presume that Dr. Benjamin Hunton and Mr. Leo Allman

represents an optional zone. The blue is a high school optional zone. This optional zone between Wilson, Western and Roosevelt exists because these -- the students in this area may elect to go to Wilson, to Western or Roosevelt.

At the junior high school level the option exists between Gordon and Macfarland and below here (indicating) between Gordon and Banneker, and here (indicating) between Cardozo and Western.

This total area is an optional.

Q Now you, in your earlier answer to one of my questions, talked in terms of some dissatisfaction with the creation of optional zones.

A That is right.

Q And I believe you indicated in your testimony that this had to do with changing racial patterns or had a racial connotation.

A No, I didn't say it had a racial connotation, sir.

Q Well, let me ask you this, then: What did you say and what did you mean by your hostility to the optional zone?

A I think that optional zones have a tendency to make one school be considered a better school than the other. In the past in most optional zones students have had a tendency

to select to go to school at the highest socio-economic level.

Q Now, would you indicate for the record what areas in that optional zone you have discussed, the junior high school optional zone and the senior high school optional zone, the blue and red differentiation of the dotted lines, what one of the schools or more of the schools would be in what would be considered the better socio-economic class?

A Well, I think --

THE COURT: Let's make it higher, which I guess is what you mean.

BY MR. KUNSTLER:

Q Higher socio-economic class.

A I would say Gordon as compared with Banneker.

I would say Gordon as compared with Macfarland. I would say Western as compared with Cardozo. I would say Western as compared with Roosevelt. I would say Wilson as compared with /Roosevelt.

~~Q~~ Now, in considering the proposed Rabaut School, the area that we have discussed, was any consideration given at all to its location in, say, for example, the Deal-Wilson area, the area west of Rock Creek Park?

pointed, what was that?

THE WITNESS: That was this optional zone that existed here [indicating on the map] for many years.

THE COURT: Was there any change in that in 1965?

THE WITNESS: In 1965 Roosevelt was under capacity, Western was under capacity and Wilson was under capacity, and we allowed the students in this area to select any one of the three rather than just Roosevelt or Western. We just added Wilson in there.

THE COURT: Wouldn't it have been easier simply to have them go to Roosevelt?

THE WITNESS: It would have been. It's closer to Roosevelt, but these schools were all under capacity; and since before I became Assistant Superintendent this area has been an optional zone.

THE COURT: What is the purpose of an optional zone? I have never been able to understand it?

THE WITNESS: Well, an optional zone is a zone in which a student is allowed to attend one of several schools.

THE COURT: I understand that is what it is but why is it? Why don't they have solid boundary lines for these various schools? Why give children in a certain area an option as to where they go?

THE WITNESS: Because the schools are under capacity



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and they have a preference by virtue of living in the optional zone to attend an under-capacity school.

THE COURT: Is that the only reason for optional zones?

THE WITNESS: That is the only reason today. The original optional zones may have been created for other reasons.

THE COURT: You say "may have been"?

THE WITNESS: May have been.

THE COURT: Do you know?

THE WITNESS: I don 't know for sure but I have a suspicion.

THE COURT: What is the suspicion?

THE WITNESS: That this optional zone was created when Roosevelt High School was turning Negro very rapidly and a lot of people were afraid of sending their youngsters to a predominantly Negro school. And Western was a very small school and they were allowed to go across the park if they wanted to go.

THE COURT: The purpose of the original optional zone was to let the white children --

THE WITNESS: Let anyone in that area go because this area became a Negro community.

BY MR. KUNSTLER:

Q To carry this only just a little bit further, I am

A At the time of the original drafting of the Dunbar-Ballou optional zone, both Dunbar and Ballou were schools below capacity. Ballou has grown to be such a large school that we were forced to shift the optional zone from Ballou to Western because Western is an under-capacity school.

Q I am not talking about that time. I am talking about the original establishment.

A At the original establishment of the schools both schools were under capacity.

Q Both schools were under capacity?

A Both schools were under capacity.

Q Can you indicate to the Court why at that time any optional zone was necessary?

A The original Dunbar-Ballou optional zone was created in order to give the people who were living in the Southwest an opportunity to attend an integrated school. At that time Ballou had a great many more white students than it has at the present time. Both Negro and white parents living in this community had an opportunity to elect to go into this school if they so desired.

Q Do you know how many Negro parents took advantage of the optional zone to send their children into Ballou?

A No, I don't.

Q Do you know how many white parents did?

far as Dunbar was concerned?

A Yes.

Q And that optional zone is still in existence, is that correct?

A That is correct.

Q Now, the new optional zone exists between Dunbar and Western, is that correct?

A The former Ballou-Dunbar optional zone [indicating on the map] now exists between Dunbar and Western.

Q Now, just for the record -- I know this is repetitious, but just to assist you and myself -- Western, as of October, 1965, had 696 Negroes and 627 Negroes and Dunbar --

THE COURT: Wait just a moment. Read that again, please.

MR. KUNSTLER: 696 Negroes and 527 whites in Western, and Dunbar had 3 whites and 1,508 Negroes.

BY MR. KUNSTLER:

Q Now, as I understand it, that would mean that parents living in the optional zone could send their children either to Western or to Dunbar; is that correct?

A That is correct.

Q Do you know how many whites in the Dunbar area have transferred their children to Western?

A Do you mean in the optional --

Q In the optional zone.

A I think, approximately, thirty people have exercised that option. Roughly, twenty of them, I think, are white.

Q And that option is exercised from Dunbar to Western rather than from Western to Dunbar; isn't that correct?

A No, you could go either way. It is either way.

Q I realize that. But the ones that have done it, which way have they gone?

A Well, the majority -- I don't quite get your question.

Q Let me rephrase the question. In the exercise of the option between Western and Dunbar, in which you say some thirty people have been involved, of whom two-thirds are white, as I understand your testimony, which way has the option been exercised by the people living in that zone, by the thirty? Has it been from Western to Dunbar or Dunbar to Western?

A There are, approximately one-hundred high school age students in that area. The majority of the high school age students have elected to go to Dunbar.

Q Does that include the twenty whites that you mentioned?

A No.

Q Where have the twenty whites gone?

A They have gone to Western.

Q How soon after?

A The affected -- I don't think that the people contacted us until after the new boundaries were announced and the elimination of the optional zone.

Q That would be in May, would it not, of this year?

A After Easter sometime.

Q Well, when you say after Easter, you mean Easter of 1966; is that correct?

A Easter past, this past school year. We, traditionally, announce boundary changes at Easter time.

Q I would like to ask you just one question about Gordon and Western. It's my understanding -- and correct me if I am wrong -- that both Gordon and Western are what you would call under-capacity schools; is that correct?

A Not at the present time. Their enrollments through people coming in from out of zone have raised them up to capacity or above.

Q Now, let me ask you this question: If you know, when was the Gordon-Deal - Western-Wilson optional zone created?

A I don't know when it was created.

Q But it was in existence when you came to --

A Prior to the time that I came to Franklin School.

Q And when did you come to Franklin School?

A I came to the Franklin Administration Building in

'58. To the best of my recollection, it existed long before that.

Q Now, at the time you came to the Franklin Administration Building, it is true, is it not, that both Gordon and Western were operating under capacity?

A Yes.

Q Now, as I understand the purpose of an optional zone, it is to permit people who might be -- pupils who might be -- living in an area which is composed of schools which are over capacity to relieve that to a degree to permit them to transfer into schools which are under capacity; is that correct?

A That is essentially correct.

Q Now, in your experience with Deal and Wilson and Gordon and Western, can you indicate to the Court which way the flow went? Was the flow from Deal and Wilson into Gordon and Western, or was the flow from Gordon and Western into Deal and Wilson?

A In the optional zone?

Q From the optional zone.

A Between Western and Wilson, and I have no statistics to support this over a period of time, but I believe that the majority of the people who exercised the option to go to one school or the other went to Woodrow Wilson.

Q Now, at the time that you are discussing that Gordon

(At this point there was a change in Reporters.)

(Cross Examination - Cont'd.)

BY MR. KUNSTLER:

Q In your experience since you have been at Franklin, within your present position, have there ever been any optional zones established between schools in which there are virtually no White pupil population, if you can recall?

A Well, the optional zone that existed between Paul and Backus would have been a school where there were virtually no White population. Backus back from the very beginning was predominantly a Negro school.

Q When was that optional zone?

A That was created at the opening of Backus Junior High School.

Q Now Backus Junior High School as of Exhibit P-4, October '52, had 1223 Negro students and 33 White students. What was the other school involved?

A Paul.

Q And Paul Junior High School had 1019 Negroes in October of '65 and 136 White children. Now, when was that optional zone created?

A When the school was opened.

Q When was that?

A I guess Backus has been opened four years.

Q So that was 1962, approximately. Is that optional zone still in existence?

A With the opening of Rabaut that optional zone was eliminated.

Q That optional zone, as I understand it, enabled as with other optional zones, people living in the zones to go to either Paul or Backus?

A Correct.

Q Is it not true that the flow there was to Paul rather than to Backus?

A I believe it was.

Q Now, with the opening of Rabaut that optional zone has been eliminated?

A That is correct.

Q Now the purpose of the Paul-Backus optional zone was to relieve overcrowding at what school?

A Neither school was excessively overcrowded at the time of the Paul-Backus optional zone if I remember correctly.

Q Then what was the purpose of the optional zone?



MR. REDMON: If Your Honor please, will he either hand him the document or read the name of the schools?

MR. KUNSTLER: I am going to, I haven't finished. I see only four where Negroes are outnumbered by Whites. I will read you the schools. We mentioned Deal with 49 White teachers and 7 Negro teachers; there is also Gordon with 34 White and 16 Negro; there is Jefferson which has 19 White and 14 Negro; and lastly, there is Kramer which has 33 White and 23 Negro. All the rest as you can see from L-3 have substantially more, overwhelmingly more, I think, if you look at them, Negro teachers than White teachers. I would like to ask you whether this occurs by pure coincidence or random selection, or whether there is something else that causes those figures to result that way?

A I think this occurs because these four schools, formerly Division One schools, formerly had all White faculties and that as they have become integrated in terms of pupil population and terms of faculty, the percentage of Whites and Negroes had a tendency to equalize and that is the only explanation I can give.

Q Are they the only former Division One schools on that list?

A Oh, no.

Q Would you read the Jefferson designation?

A Jefferson had 121 White students as compared with 473 Negro students.

Q Four to one ration, correct?

A Correct.

Q What about Kramer?

A 481 White students as compared with 563 Negro students.

Q Almost 50-50 --49-51? You wouldn't call that overwhelming, would you?

A It is overwhelming this year in terms of the change in the population.

Q All right. As far as those four schools are concerned then, Deal, Gordon, Kramer, and Jefferson, all of the other Division One schools that were former Division One schools, now have, have they not, considerably more Negro teachers than White teachers, isn't that correct? And you can refer to the other chart, L-3 if you wish.

A I would say they are more but in some cases not considerably more.

Q Is it still your testimony that the reason for the preponderance of White teachers at those four schools --Gordon, Deal, Jefferson, and Kramer-- is solely caused by the fact they were Division One schools before the change?

A I don't think there is a preponderance.

Q Well, we have already discussed Deal and Gordon and we have indicated the others have more White than Negroes?

A But that is not a preponderance, sir.

Q Forgetting whether we characterize as preponderance, figures speak for themselves. All I am asking, is your testimony now that the sole reason for that is that they were former Division One schools?

A I wouldn't say it is the sole reason, but I think it is a reason.

Q All right. What are the other reasons?

A I think the location has something to do with it. I think the fact that they have a long time reputation for being good schools and teachers are attracted to good schools is a factor.

Q Is that long time reputation because they were at one time all White and have been at least with two of them, predominantly White, is that why they are good schools?

A I have some superb schools that are Negro.

Q I am only talking about these schools because as you say they have attracted teachers because they are good schools. Are they good schools because they are predominantly White?

Q Do you intend to return to the United States after that time?

A I will probably stay in England and in Europe for another month and then return around August 1.

Q Will you return to Johns Hopkins University?

A Yes.

Q Doctor Coleman, you are here pursuant to a subpoena, are you not?

A Yes.

Q Will you indicate to the Court when you received that subpoena.

A I received it on Friday evening.

Q About what time was that, sir?

A It was eight o'clock.

Q Did that subpoena direct you to appear here this morning?

A Yes.

Q Thank you.

MR. CASHMAN: Your Honor, as I say, with that presentation, we have no cross-examination of Doctor Coleman because as I indicated to the Court, we have not received any of the data upon which the survey was based, but we did want the record to show that true to our promise to the Court, we

would make every effort to bring him here.

REDIRECT EXAMINATION

BY MR. KUNSTLER:

Q Doctor Coleman, when Mr. Cashman was examining you with reference to when you would return, you indicated you have plans to come back sometime in May, is that correct?

A Yes.

Q Let me ask you this, Doctor Coleman.

Are you available, if your expenses were paid, to return at any time prior to May?

A Yes, I am.

Q And as I understood your testimony last time, when you last testified in this cause, you indicated that if your expenses were paid, you could return at any time mutually convenient.

A That's right.

Q How long would it take to arrange a mutually convenient time?

How much notice would you need, in other words?

A I have very few obligations in London and as a consequence, except for a few specific dates at which I have lectures arranged, the arrangement would take only a few days or if a telephone call were made, a few minutes.

Q I see.

And you could return here and testify as long as it

## REDIRECT EXAMINATION -- resumed

(11:45 a.m.)

BY MR. REDMON:

Q Mr. Koontz, before we go into the questions of policy concerning the transfer and assignment of teachers, there are two schools I forgot to ask you about in terms of appointments of principals and assistant principals since you have been Assistant Superintendent.

Since 1958 at Deal Junior High School how many opportunities have you had to appoint a member to the Administrative Staff?

A Well, James Clark was appointed Assistant Principal to Deal Junior High School in the Fall of 1958. The other two officers are long-time career teachers in the school system a long time prior to my coming in.

Q With respect to the Wilson Senior High School when was your first appointment made out there?

A Well, right at the time I became Assistant Superintendent, Dr. Sobel was appointed a principal at Woodrow Wilson School. I had nothing to do with the selection of that particular officer, if I remember correctly. I don't think I was in on those at all. I may have been but I don't think so.

Since that time Doctor Sobel has retired and Mr. Schere has been appointed Principal and there is one Assistant Principal. Schere was made an Assistant Principal under Doctor Sobel then he moved to become a Principal of Douglass and moved back to become Principal of Wilson.

When Schere moved to Douglass Sherman Rees became Assistant Principal at Woodrow Wilson. Then when Miss Ronsabell retired as of last year Mrs. Carroll, Beverly Carroll was appointed Assistant Principal in charge of the girls at Wilson.

Q Now, Mr. Koontz, with respect to appointment schedule for any particular year, are there times when only one school would be available for appointment purposes?

A That is right.

Q And are there times when there would be say more than one school available for appointments?

A Well, for example, if we get everything which is in the budget which we should have had back in June but will come through hopefully sometime this month, there are a number of administrative positions in that budget. If this goes, if the budget goes through we will send out an announcement of these positions.

However, if a person leaves the system in the middle

of the school year or at a different time, we may just advertise and have only that one vacancy to fill.

Q Now were any of these appointments to the Wilson Junior High School made at a time when there were other schools who were also short an Assistant Principal?

A Well I don't think there was one at the time of Rees' -- if I may just go through my notes -- at the time of the appointment of Sherman Rees there was no other male Assistant Principal appointed at that time.

Q Now in 1965 when the last appointment to Wilson Senior High School was made, were there any other schools available at that time or in need of an Assistant?

A Eastern High School had a vacancy which was filled at that time.

Q The appointment which was made at Eastern High School, was that a Negro or a White?

A That was a Negro Counselor.

Q Will you tell us why the selection was made to send one person to one school and the other to the other school?

A Well, in my considered opinion, I thought that Elizabeth Greene, the lady who was the counselor, would function better as Assistant Principal of Eastern, because she had been counselor for a long time at Spingarn, and at



one time the Eastern area was the Spingarn area, and she was more familiar with that end of the City and that type of youngster, and she was a very strong counselor and had done good work with such youngsters. I thought it would be to our advantage to put her at Eastern.

Mrs. Carroll had been for many years a teacher at Woodrow Wilson. It seemed logical at that point that she be appointed there.

Q Now what is the policy with respect to the assignment transfer of teachers? Let's take permanent probationary teachers first. Do they have a priority with respect to temporary teachers?

A Well, if we have a vacancy, and the percentage of permanent teachers is not higher than the City as a whole, at the beginning of the school year we will transfer a permanent teacher into a vacancy over a temporary teacher.

Q Now with respect to the assignment of temporary teachers, what is that based upon primarily?

A The assignment of temporary teachers other than a consideration of attempting to equalize the percentage of permanent and temporary teachers, and the course of the school system, are based on the quality of the temporary teacher. We just put temporary teachers wherever there is a vacancy.

Q Mr. Koontz, on Friday it was discussed by you and

Mr. Kunstler the selection of the site of Lincoln High School on the eastern side of the Creek. Mr. Kunstler asked you had you given a decision to construction of a site on the eastern side of Rock Creek Park. Will you tell us what considerations go into the selection of a Junior High School, and in particular in that area?

A I don't quite understand what you are talking about.

Q Mr. Kunstler indicated to you or asked you whether you had given any consideration to selection of a site on the west side of Rock Creek Park for the building of a school, and you said "no". Will you tell us or please explain that to us?

A Well, I think there are a number of considerations which must be taken into the location of a school site. It has been our objective to attempt to locate school sites, to locate schools where the children are. When I said that we hadn't given any consideration to a school site on the far side of the Park, actually this is an area where there is no great need at the present time for a school. Our need in order to serve the pupils is on the 16th Street side of the Park. Our overcrowding is in that lower area. That is the reason for the location of the Lincoln there.

Q With respect to transportation, was this considered by you at all?

A Well, we have to consider the flow of transportation, if at all possible. Because we want our youngsters to get to and from school as easily and as conveniently as possible. Certainly a site on the far side of the Park would mean, where Mr. Kunstler had indicated, would mean that there would be some difficulty in getting there because of the limited facilities of transportation through the various accesses to the Park.

Q How about the worth of a particular site in terms of how much it is going to cost you to raise it?

A Well I would say I think probably this could be borne out by people who do the appraisals of school sites. The land on the far side of Rock Creek Park has a higher evaluation than the land on the east side. I am not sure of that, but I would believe it. I would think that this would be more expensive to buy because of the larger homes and so forth in that area.

MR. REEMON: No further questions.

RECROSS EXAMINATION

BY MR. KUNSTLER:

Q Mr. Koontz, just to pick up where you left off

Rock Creek for the construction of the Lincoln School?

A We never went into any consideration of land west of Rock Creek for the construction of the Lincoln School.

Q So the value of the land west or east did not enter into your consideration, did it?

A No, because we never considered going west or Rock Creek for the Lincoln School.

Q Right. Now, Mr. Koontz, to get to the optional zones, in one of your answers to Mr. Redmon's questions, you indicated that the purpose of optional zones, as I understand it now, was not to relieve overcrowding; is that correct?

A The original purpose of an optional zone was to relieve that. That was a mistake.

Q I was going to read your testimony of Friday. That was not true, what you said there?

A That was not true.

Q Now as I understand it there is another reason, other than overcrowding, which is not the reason, for the creation of optional zones; is that correct?

A I also said, if you will read the record, last Friday, that the other reason of creation of optional zones was to allow students to go to, or to make a selection, and this had racial considerations. There isn't any question about that.

Q Let me ask you, now we are not talking about another reason now, because you have eliminated as a reason the overcrowding?

A That is correct.

Q You are talking about the sole reason, aren't you?

A I would say as a primary reason. Because as time went on we had some overcrowding and optional zones helped to eliminate and that is the Crestwood area.

Q But the question of overcrowding was not any reason for creating any optional zones?

A In the original optional zone creation there was no consideration really given to overcrowding.

Q And the sole purpose was, was it not, to permit white students to escape from Negro schools; isn't that correct?

A I would say that the sole purpose of it was to allow students in a particular area, whether they be Negro or White, to go to a particular school. I wouldn't call it "escape" per se.

Q Well, as I understood your testimony this morning, you were talking about a safety valve, after the 1954 integration of the schools; isn't that correct?

A That is correct, Mr. Kuntzler.

QA And as I understand it you were talking not about Negro children leaving Negro schools and going to White areas, but White students who might be forced to go to Negro schools; isn't that correct?

A Mr. Kuntsler --

Q Isn't that correct, Mr. Koontz?

A That is not all correct. Will you let me finish my statement?

Q What is correct, then?

THE COURT: All right, you may proceed.

THE WITNESS: Thank you.

When I was Principal of Anacostia High School, in the early 1950's, I had, when I first became Principal, a racial fight a week. Then it became a month, one a month, and I mean serious fights, some fights where both White boys and Negro boys were arrested and young adults sent to jail because of their problems, because of their inability to get along, because of the tensions that were existent in the community. But no one after the original serious problem of the adjustment got the feeling that Anacostia High School was a bad high school, because we handled it in a quiet, orderly, dignified manner, and we allowed students, both Negro and White, to transfer.

There was a considerable transfer going on in the early days of integration all over this City. As a matter of fact, there was a Committee established which was in existence for a number of years, which handled just such transfers for better adjustment, and they were both Negro and Whites involved in such transfers.

Q Well, I would still like to get the answer to my question. I am talking now not about City-wide transfers, which apparently you are discussing now, is that correct?

A Well, -- what is your question?

Q My question is this: wasn't the sole purpose of the creation of optional zones, after the decision in *Bowling vs. Sharp*, to provide, as you have indicated, a safety valve for White students to get out of the orbit of Negro schools?

A Well, you know the way you say it, it sounds dirty. But the fact of the matter is, Mr. Kunstler, that these were trying times in the school administration, and in an effort to maintain sanity in this community had to do a number of things and had to have the leeway to do a number of things.

At that point I would say and support, and it happened before I came to Franklin, but I would say that this was a very wise decision and one which is justifiable, and that is to prevent such serious tensions in the community that the

community wouldn't disintegrate.

Certainly the Crestwood option which existed between Roosevelt and Western and Cardozo and Western was such an optional zone and a worthwhile and a good thing.

Q Now these optional zones, or some of them at least, extend up to the present day, don't they?

A That is correct.

Q And I take it then on the basis of your previous answer you would consider the situation just as tense and serious today?

A I would not. Today it is an entirely different situation. The area which I am making reference to originally, the Crestwood area is predominantly a Negro area.

Q Then your testimony then is that the need for optional zone vanishes when you don't have situations in which White children are by the force of the neighborhood concept or by the force of the boundary lines forced to go to a Negro schools?

A I don't understand what you are saying.

Q I am saying this: As I understand your testimony, the need for optional zones arose post-May 17, 1954, when you had situations where White children would, unless there was a safety valve, be forced to go to predominantly Negro schools?



Because Ballou is a school far above its capacity

now.

Q Let's just pursue that for just a minute. I am just trying to straighten out the testimony. The original reason for optional zones was the 1954 reason you have given, namely, to provide the safety valve; is that correct?

MR. REDMON: I object to that question. The testimony was that the optional zone within the Crestwood area was created for that purpose.

THE COURT: Is your explanation about safety valve limited to this one?

THE WITNESS: To that one particular situation in the early 1950's, Your Honor.

THE COURT: I see. Now maybe we can pursue this a little bit more and get it over with, if you will tell us why there are optional zones today. The basic principle for optional zones today.

THE WITNESS: The optional zone in existence today is to give those students in the Dunbar area the option of attending either Dunbar or Western. The purpose of it is -- it is not a safety valve at this point. The people living in the Southwest area in the redeveloped area will not go to a predominantly Negro school. They will send their children to

private schools. Now we have found this to be a fact. So this is no safety valve. We had no problem at that point. They just take their children out of school and go elsewhere and retreat from the City and not come back into the City. At this point this area has a chance of coming back and being a truly integrated community.

THE COURT: So the present purpose, as I understand the answer to the question, is to give the people who live in this zone an opportunity to send their children to an integrated school?

THE WITNESS: That is correct.

THE COURT: Over the Negro school in which they live?

THE WITNESS: They live in either area, Your Honor. I want to emphasize it. The optional zone is an option between two schools, not one school.

THE COURT: I understand that. As I understand it an optional zone is in the territory of one school; is this correct?

THE WITNESS: It is in the territory of two schools. For example, this territory I mentioned here is in the territory of Dunbar and Western.

THE COURT: All right. It is in the territory of two

schools. So that means then that people who live in this optional zone can go to one school or to the other?

THE WITNESS: That is correct.

THE COURT: And the present reason for having optional zones is so that a person can make a choice between sending his children to an integrated school or a completely Negro school; is that accurate?

THE WITNESS: I think that is a reasonably accurate statement.

THE COURT: I don't know what more you can make of it.

BY MR. KUNSTLER:

Q Mr. Koontz, was there also -- maybe my information was wrong -- ever a Francis-Gordon optional zone?

A There may have been -- yes, in my time I think there was an optional zone or corner up here in this place.

Q Is that optional zone still in existence, do you know?

A I don't think that zoning is in existence. I think we moved that area into Gordon because Francis became so overcrowded that we just had to move it in.

Q Do you recall if the purpose of that optional zone was the same as you have just described to His Honor?

A The same as the other, yes sir.

Q Now, let's get to the question of the teacher transfers and appointments that you have gone over with Mr. Redmon.

As I understand it in your redirect you indicated that you had gone through the transfer book; is that correct?

A That is correct.

Q To determine what teachers it applied to?

A You asked me to do this.

Q Of course the transfer book has no racial designation, does it?

A No, sir.

Q You had to go into other records?

A I had to go into the personnel cards of other teachers concerned.

Q And you did that?

A I did that, yes.

Q Now with reference to the transfer of teachers throughout the Junior and Senior High School, am I correct when I say that no teacher, be he permanent, temporary or probationer, has any vested interest in any particular school; is that correct, as far as remaining there is concerned?

A Theoretically they have no vested interest in remaining there. They are, a teacher is a D. C. Public School employee, period.

Q Correct. And you would have the right, would you not, if you considered it important or necessary, to transfer teachers anywhere in the Junior or Senior High School areas, isn't that correct?

A I may have the right, but I would be a fool to do it.

Q I am not asking you that question. All I am saying is you have the right to do it?

A I am not even sure I have the right to do it because I think the Board of Education would overrule me if I went about making wholesale transfers any place in the school system.

Q I am not even talking about wholesale transfers. For example, if you considered it important to make a concerted effort I believe as you indicated to integrate school faculties, you would have the right, would you not, under your powers as Assistant Superintendent in charge of these two secondary school systems, to transfer for example five teachers from Deal to Francis, would you not?

A I would have the right but I would consider it a mis-use of the right.

Q All right. But you would have the right?

A I would have the right.

THE COURT: He said he would have the right.

BY MR. KUNSTLER:

Q Now would that also pertain to Principals and Assistant Principals?

A It would pertain to Principals and Assistant Principals.

Q Now you have indicated that you have not exercised that right, is that correct?

A I have not exercised that right very frequently.

Q In the main, then, as I take it, you rely for the transfer of teachers from one school to another to their making a request to you?

A Primarily to their making a request. Correction. Permanent teachers.

Q Permanent teachers?

A Permanent teachers, yes.

Q Now have you, since 1958, ever assigned a permanent teacher between schools without having a request?

A Yes, I have done this in cases of opening new schools, or I have done this when the teacher and the principal have not been able to get along, in case of a personal adjustment I have done such things as that, or I have done it in the case of where there was a need for a particular kind of teacher in the school system.

we will assume the highest of the group, they could be appointed to any school, isn't that correct, to any high school?

A They could be appointed to any high school.

Q And the statement you made in response to Mr. Redmon's question was, you could only, at least on a practical level, appoint them to where there was a vacancy, isn't that correct?

A No. It would be possible for me to transfer a principal from one school to another, and appoint the new person in such a place. As a matter of fact, that is the policy that we are now operating under in terms of opening new schools. We do not open new schools with new principals. We open new schools with experienced principals because of the vast problems that are associated with the opening of new schools. For example, Dr. Graves, the Principal of Rabaut Junior High School was one time Principal of the Woodson Junior High School. He had formerly been Assistant Principal at Sousa Junior High School and at MacFarland Junior High School. Because of his experience and because of the problems that one has, just the physical problems of opening a school of 1500, we have found it advisable to transfer a permanent person into do the opening.

At Roper, we moved the Principal from Randall Junior

High School. Red Aranha was Principal Assistant at Langley prior to that.

Our policy in this sense is that when we open new schools, we bring experienced principals in and fill in behind them with a new person.

Q In doing this do you take into consideration the racial composition of the new school? Does that enter into it as one of your criteria for selecting a principal or assistant principal?

A 90 per cent of the student body of D. C. Schools is Negro.

Q I am assuming that.

A I think that answers your question. Most of my schools are predominantly Negro schools. As a result, most of our officer candidates are predominantly Negro schools. If they are the best qualified people they get the appointment. That is the only major criteria used.

Q But you thought, did you not --

A We do take into consideration certainly in a sense race, if necessary. I would say that because there might be situations in the background of a person which would not make him a good person to go into an area.

Q Well for example, when you assigned Mrs. Elizabeth Greene, whom I believe is a Negro, is that correct?



need at Woodrow Wilson High School. I think that her talents could be better exploited at Eastern than at Woodrow Wilson.

Q Well would you say then, Mr. Koontz, that it would necessarily follow that in your professional experience it would be extremely difficult for you to ever to decide to send a Negro in to Woodrow Wilson, a Negro counselor for example?

A I have a Negro counselor in Woodrow Wilson and he is a very competent person because he was the top person on the list at the time the vacancy occurred. Reginald Washington is a very competent counselor. If you imply that he isn't you are not being fair to him.

Q I am not implying anything. We are not talking about competence at all. We are talking about race.

A Reginald Washington is a Negro counselor at Woodrow Wilson High School.

Q You are not letting me finish my question.  
What is Mrs. Elizabeth Greene's role at Eastern High School?

A Assistant Principal in Charge of Girls.

Q What is Mrs. Carroll's role at Woodrow Wilson?

A She is Assistant Principal in Charge of Girls.

Q And Mrs. Carroll is White; is that correct?

A That is correct.

Q And both of these appointments were made by you; is that correct?

A At the same time.

Q At the same time?

A At the same time.

Q And your judgment of sending -- all I am trying to get is the basis of the judgment -- of sending Mrs. Greene into Eastern High School and Mrs. Carroll into Wilson High School was in essence a racial designation, was it not?

A That is not true.

Q Well, maybe I don't understand then why Mrs. Greene was not sent to Wilson and why Mrs. Carroll was not sent to eastern.

A I don't think I could ever make you understand that.

Q Well you gave me a reason, and the reason was you thought Mrs. Greene, because she had been in the Negro community --

A I didn't say the Negro community. You said the Negro community.

Q You explain it then.

A I said because of the training that Mrs. Greene had had, in terms of working with children who are going to get jobs immediately upon the completion of high school, because of her wide experience with other community agencies, because

of her experience in working and living as an educational person in that community for a long period of time, made her better qualified to be the Assistant Principal at Eastern High School. If that man can't understand that, he is stupid.

THE COURT: Well, Mr. Koontz, I don't think we ought to get into personalities here.

THE WITNESS: Well, but I am just getting tired of being badgered.

THE COURT: I understand this is a very trying experience for you. If you want to take some rest --

THE WITNESS: No. I prefer to go on, Your Honor.

BY MR. KUNTSLER: Let's just finish it up this way, Mr. Koontz.

When you say she had more experience you are pointing to an area of the map with your hand.

THE WITNESS: I am talking about her competence.

BY MR. KUNTSLER:

Q Forget her competence for a moment. That is not in dispute between us. I am just asking you the question, of all the experience that you have related to me just now, that experience was in the area where she was working with Negro pupils primarily; isn't that correct?

A Mrs. Greene had gained her experience by working,

Q Miss Lyons, with respect to ability grouping in the particular classrooms in the schools in Division 2, did such grouping exist prior to 1954?

A I'll go way back to when I started. That's a long ways back. Within the classrooms we always had our children grouped for their best learning. We had them grouped so that every child would secure a certain amount of satisfaction of the work that he was doing. I can remember in the first grades, within the first grade of maybe 40 children -- and some of our classes had 40 and 50 children -- there would be maybe the Bluebirds, who were the fastest moving. There maybe would be the Redbirds and they would then be the Squirrels, but there was that grouping of children always.

Q Now, with respect to the testing of children in the Division 2 schools, did such testing take place?

A Such testing always took place. Back in those days Dr. Howard Long was in charge of the testing program in Division 2, and Miss Jessie La Salle, for whom we have named our laboratory school, had Division 1. We had testing of children, intelligence testing and achievement testing. I can remember very well that one of the favorite tests we used was the Progressive Achievement Test. I can even see clearly in my mind today the way we made the profile on the back of the test so that you can look down at the test and see where your child stood in a particular

phase of reading, whether his comprehension was better than his word recognition, but we always tested our children. May I elaborate a little bit on that point?

Q Yes, please do.

A I remember very well a meeting with my supervising principal in Dr. Garnett C. Willinson's office at the Franklin School. He was the Assistant Superintendent of all the schools in Division 2, and I remember Dr. Long meeting with us, remembering that Dr. Long had charge of the testing program, and I remember of us discussing the ability of our children in the various phases of the curriculum. We talked about it. We had meetings about it. We met ways and means of improving the instruction of our children based on the test results. Now, we did that year after year. The testing program was not unknown to Division 2, not by any means.

Q Miss Lyons, in the course of your functioning in Division 2, say from 1950 to 1954, did you have occasion to come in contact with Dr. Hansen or other members of the Division 1 administrative staff?

A Why certainly.

Q And in what respect?

A Way back in the days a long time ago we used to -- not so long ago either -- we used to work on Saturday, the offices worked on Saturday. I sort of hated when we gave it up

because on Saturdays you always picked up those loose ends and you got a great deal done, and we would meet once a month, all officers together, city-wide officers, in the office of the Superintendent of Schools, and I can see us now in that big office. It seems to me -- I guess it is the same office that Dr. Hansen occupies today, because you could look out on the building across the street and we could look at the clock and we could tell how long we stayed.

Q Was there any correlation of the curriculum between Division 1 and Division 2?

A Definitely. When Dr. Hansen first came here he was in charge of curriculum. Dr. Hansen worked very closely with a member of Division 2 on the matter of the curriculum, and we all got the benefit of it, because we came in -- as they worked on sections of the curriculum, the officers of the field came in and sometimes as they worked on the curriculum then we would go back and experiment on it, and so there was that close cooperation between the two.

I'd like to say just another point there also. The Division 1 and Division 2 worked closely together on one of the most important committees in the public school system, and that is the text book committee. The committee is a great over-all committee that encompasses every level of the system, and there's one section on elementary schools. There's a section on Junior

High Schools, and so on up. But the committee was made up of representatives from Divisions 1 and 2, and so there was close cooperation there, and when the books were selected they selected by the members of the committee, Divisions 1 and 2.

Q Do you remember, Miss Lyons, when the Supreme Court decision came down with respect to the desegregation of the school system and Division 1 and 2 were then dissolved and became one school administration and system?

Can you tell us, Miss Lyons, what took place with respect to the establishment of the boundaries at that time?

A I like to recall that incident very well. It was to me one of the most dramatic of all. We were told that the boundaries had to be published in the papers all within a week's time. Well now, we must remember that this edict did not come to us all of a sudden. We had been getting ready for it in many ways, but we met -- it seems to me it was in the Rudolph School -- I am talking of the elementary schools now -- all of the principals in the city. It was a very hot afternoon. The organization was this: The principals in one area met in one classroom. The principals in another met in another classroom, and in another, another classroom, and then they began to work under the supervision of the Director in Charge of Administration, and on that basis they began to study the numbers of children in each building and whether or not Building "A" had



room to accept children in that area from another building. With goodwill and good fellowship, and a deep desire on the part of every single elementary school officer to make this thing go, we got the boundaries ready. Now, those were the initial boundaries, but we bear in mind that the boundaries have always been flexible. A boundary that is good for a school today, this year, is not good for that school next year. Why? Because the population changes. The boundary down here at the Walker-Jones School, down here on L Street, is going to change very shortly because the freeway is going through there and the school population is dropping, and so the boundaries were flexible. But inside of about a week's time we had some boundaries ready to publish in the paper and they were published. We received many telephone calls about it. We answered many questions, but with the opening of school in September there really were no real incidents about the children going to the schools to which they had been assigned.

Q After the boundaries had been changed and both Division 1 and 2 had been incorporated within each other, did there come a time when your position changed in terms of your function in the school system?

A Yes, almost immediately it changed. The principals and the officers of Division 1 had been meeting with Dr. Hansen on a monthly basis, and the same thing with my office on a



monthly basis. That changed, and without any particular to-do about it we began to meet together. We began to form committees, to study the problems of the elementary schools. All of those things we did together and the feeling was excellent.

Q When did you become Assistant Superintendent, Miss Lyons?

A Do you mean of Division, all over?

Q Yes, ma'am.

A I think '54. I think it was July, '54.

Q And when did you retire from the school system?

A June '65.

Q Do you recall, Miss Lyons, when the four-track or three-track curriculum was instituted in the elementary schools in the District of Columbia?

A Very clearly. I remember that we began considering the matter of honors classes in the elementary schools. There had always been a discussion about this. There were many of us who felt we should not establish honors classes, that maybe we would make our children -- this had nothing to do with race -- that maybe we would make our children little snobs, that if you pulled them off and said they were in this class that was moving rapidly they would be snobs. Well, we took one year, one whole year in the elementary schools to study this whole matter of just one group, honors. Now, how did we get our

thoughts over to all the principals. It didn't just concern one set of principals; it concerned all the principals in the elementary schools, and we had meeting after meeting with the entire group of principals who were then integrated, and then we had small working groups that reported their findings, and finally after much discussion, after many small groups and many large groups we decided that we would have honors classes, and we set up criteria. Well, you know it took us a long time to set up a criteria for the nomination of children to honors classes. We were very honest about it. We said that the child's IQ should not be the only deciding factor. There was something about the child's accomplishment, there was a whole lot about the child's drive, his disposition. All of those things had to come into play, and then we established honors classes all over the city, nothing to do with race whatsoever.

Q Is the system as you have seen it operate in the elementary schools flexible so that the child, if able to do so, can accept even larger responsibility by virtue of the curriculum?

A Very flexible. When we began to group children into these classes, one thing we said, an honors curriculum did not mean the piling up of more arithmetic examples on a child, or the giving them more pages in history or geography, but it meant a depth and an enrichment for this child who was in an honors

class. All of it was flexible. Every, oh, every month or so we would take a little examination of these children. We would examine their records and see what kind of records and what kind of reports were they taking home. Sometimes we would find that some little fellow here in an honors class had the potential. He had everything, everything that he needed, but he really wasn't putting forth the effort, and sometimes his rating dropped very low. Sometimes a child who was in that general track in a real high general track, but wasn't honors, had demonstrated that he could go in the honors track and he was so placed there if his parents wanted it. Now, we also remember that there were some parents who said, "Well, I would like my child to be in the honors track but if he has to travel too far from home to get in the honors track I would rather he didn't go."

Q Now, with respect to the curriculum which has been designated the special academics, Miss Lyons, was there flexibility in the adaptation of that curriculum?

A Definitely flexible. A child will move as fast as he can. If it is discovered that a child can move out of that special academic, in due course of time and with the proper precaution and the approval of the Department of Pupil Personnel, the child is moved out of that track, and we have a number of instances of children who have moved from the special academic into the regular track of the elementary schools.

A In much the same way. Many of the teachers who come out on the eligible list from D. C. Teachers College have practiced in the schools of this city -- well, they all have -- and many of them would write in and say, "If I'm fortunate may I go back to the school where I practice taught?" -- which seems good sense. Well, where possible we would let that person go back to that school. If she practiced, taught, in the Grimke School for two months and she says, "May I please go back there," I think I could do my best job," well that seemed to be sensible. Well, we would also transfer teachers frequently from buildings where they had been for some time maybe and place them in other buildings where their strength was needed.

Q Now, with respect to the classification, which I am sure you understand, of tenure and temporary teachers, Miss Lyons, it has been stated in this lawsuit that a temporary teacher is not as experienced or as qualified as a permanent teacher. Would you care to comment on that from your experience in the system?

A I would say that -- well, we have many temporary teachers who don't wish to become permanent teachers for various reasons. They are here in the city on a temporary tenure. They are the wives of service men. They will be leaving in a couple of years and they wouldn't want to be bothered with the examination. I know other people who feared the examination and would

not bother to take it, but they were excellent people. I bear in mind that there is a young woman in the Department of Supervisions today who was a temporary teacher. She came in and demonstrated her ability in a school. We finally persuaded her to take the examination. She took the examination. She passed. She became probationary and she is now in the Department of Supervision, and so I don't feel that I could subscribe to the statement tha the temporary people, all temporary people are inferior to the permanent people.

Q Miss Lyons, you've been, of course, Assistant Superintendent to 1965 and you have been present since Dr. Hansen has been Superintendent of Schools. Can you tell us some of the programs that have been devised in that period of time in the elementary school areas for disadvantaged children, culturally depriced in the areas of our city?

A Yes, I would like to talk about the language-arts program which encompasses many schools. It started off with 14 schools in disadvantaged areas. It started off with a grant from the Ford Foundation. The school system worked very hard to get this grant. Our proposal was sent to New York several times before it was finally accepted. That program is to bring a more enriched life to young children. It took in kindergarten, grades one and two, and that program sought to give better language power to the children, to enrich their lives, and in

turn it also aimed to draw the parents into the program so that a child returning from school to his home would have a mother who would be able to talk with him and to appreciate his desire for good language. The program has been highly accepted and is now subsidized by the public school system and is a department of the public school system.

Q Miss Lyons, there has been an indication in this lawsuit that the track system, three-track curriculum in elementary schools, and four-track curriculum discriminates against Negro children. In your experience as an Assistant Superintendent did you find this to be or not to be the case?

A I don't find that to be the case. After we had been into this track system about a year we made a survey of all the principals here in the city asking for a frank appraisal of the system. Well, some of the questions asked were: what do you think about it, what do your parents think about it? Now, this went to all principals, and in general the --

MR. KUNSTLER: Your Honor, I want to object here. He has asked for her opinion as to the track system and she is going now the opinion, I think, of other people who gave answers to a survey. I think if she has information on her opinion she ought to give it, but not the accumulation of someone else's opinion.

THE COURT: I think the witness can give her opinion.

I think that is about as far as she can go.

MR. REDMON: Very well.

THE WITNESS: Well, my opinion is that it did not discriminate. if you want my opinion.

BY MR. REDMON:

Q Miss Lyons, when drawing elementary school boundary lines, is this a function which you contributed to or were a part of during your time as Assistant Superintendent?

A The matter of the drawing of the boundary lines is a function assigned to the Office of Director of Administration. That office comes under the Assistant Superintendent's office. When the boundary lines were drawn, however, the conferences, the culminating conferences were always held in the office of the Assistant Superintendent.

Q Now, when a new boundary line is drawn for a new school or an amendment of a boundary line in an older school is made, what factors do you take into account in eventually drawing the lines?

A We take into account the actual facilities available in the area in which we are dealing. For instance, in the last boundaries that were drawn, they were for the McGartney School out in Southeast. I am sure that when they did that the principals gathered together, the principals concerned, and I think there were four principals concerned -- the four principal



concerned gathered and indicated how much overcrowding they had, how many part-time classes they had, and how many children they needed to give up, who would be within a normal boundary of the McGartney School, and that happens with each principal who is in this area. She indicates how much she needs to give over to the new school. Now, in doing that sometimes we have to come back and do a little giving and taking. If we find that we have a large number of little children who are crossing a heavy highway, we had to make some changes, but that in general, and then frequently the community people are drawn into the situation, but the principals, the director and the office of the assistant superintendent and then community people come into it.

Q During the late 1950's, Miss Lyons, did there come a time in your recollection when you, as Assistant Superintendent, were present during hearings in the Capitol with respect to the D. C. budget under Senator Davis?

A If I recall correctly, I went down to the Capitol to testify, and I made a short testimony. Maybe I shouldn't give it directly but it was all about whether or not the Negro children were different from the white children in their achievement.

Q Who made a statement in support of the Negro children at that time?

A Dr. Hansen.

Q Do you recall any trips that he made during the late



Q You don't recall any tension in the community when the question of optional zones first came up, for example?

A Well, I mean no more than probably is happening right now about any other matter, that parents would call in and say, "Well, may my child go to this school," or "May my child go to that school." I wouldn't consider that was a great incident.

Q All right. I wanted to ask you, you are familiar with the optional zones, are you not?

A Very familiar.

Q And are you in a position to tell the Court from your experience why the optional zones were created?

A Well, let me take one for example, may I?

Q Surely.

A There was an optional zone established between the Powell School and the Hearst School. The Hearst School is in Georgetown. The Powell School is right over here near the Roosevelt High School.

Q I see.

A That was established to permit children who live west of 16th Street to go to the Hearst School if they cared to go.

Q The Hearst School was the one in Georgetown; is that correct?

A That's right, with mostly white children. Several years ago, Attorney, the children from Southeast over way by

the Garfield School -- the Garfield School was crowded at that time -- and about 22 parents came in and said, "Miss Lyons, we think we have transportation for our children. May they go?" I said, "Wherever we are not crowded the ruling is they may go." Now, we started off with 22 children. It dwindled to 12, and I think 12 children went from Garfield, which is way over in Southeast, all the way up here to, well, one of the schools in Georgetown. They were small children. I am frank to admit that I said to them, I said, "You are taking little children away from their neighborhood." I said, "If your child becomes ill, what happens?"

Q Were these white or Negro children?

A They were Negro children.

Q Negro children?

A That's right.

Q This had nothing to do with the Hearst-Powell Schools.

A I am trying to give you -- that's the second incident.

Q Oh, I understand. Yes. Where was the --

A And we had other optional areas.

Q Where was the Powell School?

A On Upshur Street between 13th and 14th.

Q And how far away would you say in number of blocks that was from Hearst School, for example?

A I really couldn't say. I don't recall. I don't really know. It was a little distance.

Q Quite a distance, isn't it?

A Well, we said those who live west of 16th Street. You see, Powell is near 13th Street, and we said children living west of 16th Street could go to Hearst.

Q I see. And did you do that at the request of the parents?

A Well, I think -- I don't know -- there wasn't any pressure on the part of the parents because we had an optional --

Q Nothing about pressure. Did the parents -- were there any --

A They were glad.

Q The parents were happy about it, the parents that wanted them to go to Hearst?

A Yes. I can't tell you how many there were. I don't think very many went.

Q Now, according to your testimony you became the Assistant Superintendent of Schools in 1954 after integration had occurred; is that correct?

A That isn't correct.

Q Let me go back. I'm not talking about Negro schools now; I'm talking about as Assistant Superintendent of an integrated system?

A Yes, you are correct; that's right.

Q And what was your official title?

Negro schools, or Negroes into white schools, predominantly white schools --

A If it were done --

Q Let me finish this question. Do you think it would give, from your experience with both races, a better education to each of the two, Negroes and whites?

A It probably would bring better understanding.

Q What about a better education, a better educational experience?

A What do you mean by that, Attorney?

Q Well, I have to use -- because I am not quite sure I understand what I mean myself in that respect I would say that --

A Therefore I can't answer you.

Q Well, I would just try to define it a little better for you, and say, do you think that the quality of the education which each child got would be enhanced, make better use of each child's potential and give him a better chance in the future if it were more of a heterogeneous grouping by race?

A Attorney, you know the quality of that education is largely dependent upon the person in charge of the children, the teacher of the children.

Q We realize all of that.

A They don't just get it by sitting in a room one behind

the other. They don't get it that way.

Q I understand. It's only one of many factors. I agree with you.

A But that's a primary factor.

Q Well, I'm just getting back to this point. Assuming that there is a teacher there who is a capable teacher, and assuming that there's a classroom, seats and adequate books, and so on, I'm just trying to find out the difference between what your thought is about segregation and integration in the classrooms. Now, I'm just asking you the question, assuming all those factors, do you think that the child, Negro or white child, would get a better educational experience, would have an improved quality of education if that factor were added to the others you have mentioned, the good teacher, and so on? In other words, do you think an integrated classroom, coupled with everything else, is better than a segregated classroom?

A I think an integrated classroom is good if it is done on a practical and normal basis.

Q What do you consider a --

A Do you realize, Attorney, when we first integrated the schools I had white parents call up and say, "I came from Virginia, Miss Lyons, and I'm all for this thing that you all have here, but give me time. Please don't put my child in that school where they are all Negro children." And what did I

say to her? I said, "Madam, I understand exactly what you mean, and I would not do this to a little child." I said, "I will give him time to go to another school and maybe in a year or so he will return and maybe he will go into the school where he belongs." The mother understands exactly.

Q Did they return?

A Frequently they did, and the parents would come in and say, "Well, I know just what you meant, but lady, I came from a place where we didn't know anything about associating with Negro children."

Q Now, I think we have agreed on the integration factor, unless you want to say something else about it?

A No, there are so many facets there, Attorney, that really just by putting white and colored children together doesn't do anything. That's just a little bit. Putting them all in a room together doesn't do anything.

Q But it is part of it, isn't it?

A Yes, but it doesn't do that. It doesn't do it. I just can't say by putting them together that's going to be the answer, because it isn't the answer.

Q Well, we are not saying the whole answer, but it's part of the answer, isn't it?

A Well, yes, if people are going to learn to live together then they should live together.

change in Shepherd, in your experience as a member of the Superintendent's staff, after integration, did there ever come a time that you recall when a Negro principal was named for any of those predominantly white schools in the Northwest Section that you can recall?

A No, but I can tell you a Negro principal named to a predominantly white school in the Southeast Section.

Q Well, I'm not talking about the Southeast at the moment; I'm talking about the Northwest. Do you recall such an instance?

A No. Most of those principals -- the principal of Jackson was there when I went to Franklin.

Q Isn't it a fact, Miss Lyons, that there was a tradition or an unspoken policy that white principals were to be assigned to those all-white schools?

A No.

Q You didn't understand that to be so?

A No, emphatically no.

Q Did you ever raise at any of these meetings with Superintendent Hansen the fact that no Negro principals had been appointed for those schools?

A Attorney, I don't think I viewed the situation that way. I viewed the situation as the best person. I would say to myself, if I have a good principal at Janney -- and that's

a wonderful woman at Janney -- I don't think it would have been the part of wisdom to uproot that principal and put her some place else just to say that we have a Negro principal in these schools.

Q But there came openings, did there not, in those Northwest schools during that eleven-year period?

A A few, but the openings were not up there particularly.

Q But there did come some openings, though, in the Northwest --

A Yes, but we didn't view it from the standpoint of race.

Q Well, all I want to find out, is it your testimony that all of the principals in the Northwest Section, the white principals in the elementary schools, were in every instance the best possible person for that job?

A That was the only criteria we ever used. We put a white principal at the Morgan School and that's a Negro school, and we put her there because she was the best.

MR. GASHMAN: Your Honor, Miss Lyons has been on the stand now for about an hour and fifteen minutes. Could we have a short break for her?

THE COURT: Will counsel step up to the bench, please.

(AT THE BENCH:)

THE COURT: We have no court reporter coming in. I



want the daily copy. At the same time, though, if it is going to interfere with the progress of the trial we are going to have to make other arrangements.

MR. CASHMAN: Yes, Your Honor, my preference is your own, too. I would prefer that we use the people here in the building.

THE COURT: Well, will you see that that is done?

MR. CASHMAN: I certainly shall, sir, and I will let you know how I make out tomorrow morning.

MR. REDMON: While we are here, Your Honor, may I inquire as to how long Mr. Kunstler might be.

MR. KUNSTLER: I don't have much longer. I would say a half hour longer.

MR. REDMON: Very well.

THE COURT: I promised the reporter we might get finished by four o'clock.

(IN OPEN COURT:)

THE COURT: Are you able to go ahead now, Miss Lyons?

THE WITNESS: Oh, sure.

BY MR. KUNSTLER:

Q Miss Lyons, then we will try to get you off rather rapidly.

A That's all right.

Q I only have about 20 more minutes. In any of the

meetings with the Superintendent's staff with reference to the appointment of principals throughout the elementary schools, did you ever recommend that he appoint any particular Negro applicant to one of the Northwest white schools?

A I don't believe I did, but it was on the basis not of race.

Q No, I'm not asking for the reason about whether it is race or not, no race. You didn't recommend to him any Negro teacher or principal applicant for any of the Northwest all-white schools?

A May I say this? As I recall, the principals who went into the Northwest schools while I was at the division district all went in by transfer with the exception of one, with the exception, I think of the Hardy-Key.

Q Was there any discussion in your committee or the Superintendent's staff while you were there of transfers? Did you discuss who was going where?

A Oh, yes.

Q Mr. Hansen asked for recommendations?

A Oh, yes, when we discussed it -- you see, I discussed it with many people, with the Supervising Director of Instruction, with Dr. Hansen, Mr. Ricks, and then we'd say, well instead of making the new appointment here we'll transfer that person from that area over to this area, and we will put the

new appointment somewhere else.

Q In connection with that, did you ever recommend to Dr. Hansen that he transfer a Negro principal into a predominantly all-white school in the Northwest Section, and if so what was that person's name?

A No, no, no.

Q Now, you also indicated, I believe, that there was some sort of an honors system before integration took place -- is that correct?

A In the Negro schools?

Q In the Negro or the white schools, I don't know?

A I have to speak for the Negro schools.

Q All right.

A Just as I have tried to indicate, if you had 120 sixth grade children, you maybe had a group of those children who were exceedingly bright, but we probably did not call them honors, but within the building those children were probably grouped together for their best learning possibility, for the challenge and for their work.

Q Was that done by a directive of the Superintendent of Schools, or was that done by the Negro teachers on their own hook?

A It was probably done by the Negro principals. Now, all of our recommendations for organization of classes and of

buildings always went into the Assistant Superintendent. At that time it was A. Kaiser Savoy, and he looked over what we did. It came in by way of supervising principals, the instance, but as supervising principal I had about 15 buildings under my care.

Q But this was not a city-wide honors system as you knew it?

A Not as such, but it was the same thing. It was grouping the children, just the same thing.

Q But grouping them, as you have explained prior in your earlier testimony?

A Yes.

Q Now, ~~the first city-wide grouping system~~ that took place, did it not, after integration with the track system; isn't that correct?

A I suppose, Attorney, I can't tell you what went on in Division 1. I would believe, though, that they must have grouped their children as a slow learning first grade, of a first grade that moved faster, and another that moved faster than that.

Q Yes, but I am asking you this, Miss Lyons. The first city-wide directive that you knew of, ~~as far as~~ ability grouping, came with the track system after integration; isn't that correct?

A I don't remember the year.

Q Well, who did you hear it from?

A The track system per se was presented at a staff meeting.

Q By whom?

A By Dr. Hansen on the basis of I'm sure his concerted effort with many people.

Q Now, you've indicated in your direct testimony that the track system itself has no discriminatory application as far as Negroes or whites are concerned?

A How could it?

Q That was your testimony -- correct?

A That's correct.

Q Now, from your experience, Miss Lyons, from your contact with pupils of both races as the Assistant Superintendent of Schools in Charge of the Elementary Schools for 11 years, was it your expectation that the track system would develop exactly the same patterns between the races? For example, was it your expectation that you would find the same percentage of Negroes in the basic track as the same percentage of whites, that they would be almost parallel?

A I don't see any reason why not. They were children.

Q Do you know what the percentages turned out to be, say, elementary children in the basic track as between white

You are not in a position to say, when you testify that there was flexibility between the tracks, what the degree of that flexibility is.

A. I would say I remember; I testified before the Board of Education at the Franklin Building once, I forget what month it was.

Q. What year was it?

A. About a year before I came out. I'm not sure. It seems to me at that time we said there were 54 children, I would not want to perjure myself.

Q. Fifty-four children?

A. Who had been moved in the middle of the year out of the track system back into regular track.

But then again I am trying to answer your question but I am not sure.

Q. Out of how many was that, if you recall?

A. I could not tell you.

Q. You also testified when you placed a child, I think you said, in the special academic track, you get the permission of the parent, isn't that correct?

A. That is correct.

Q. But that is only last year?

A. No, that is not so. I understand now that it is with the written consent of the parents. When I was in

office, I always caused the principals to talk with the parent, explain the situation and if the parent was not satisfied, to send the parent down to me, and I have talked with many parents about the placements of their children in special academic class and why the child needed to be there.

Q. But until last year, Mrs. Lyons, isn't it true that talking to the parent was one thing, but that the parent could not veto the placing of the child in the special academic track until last year?

A. Oh, many parents, I do not know where that came from, many parents when I was in office, vetoed the transferring of children into special academic.

Q. And was that binding upon the school system at that time or could the school system still place them in the basic track?

A. I suppose the school system could, but as far as my office is concerned, I considered it binding.

Q. I see.

A. Because I had a special regard for the parents.

Q. Now, you talked about temporary teachers—I just have one or two questions about them, that they were sometimes the wives of servicemen, people, women here on a very temporary basis.

BY MR. KUNTSLER:

Q Do you know, yourself whether there were more or less temporary teachers in say the Northwest white elementary schools than there were in what we call the predominantly Negro elementary schools?

A I cannot say, I would be honest with you; frankly, I tried to be honest this afternoon; in these schools in the far northwest that you continue to refer to, there were a large number of permanent teachers who had been there-- I found them there when I went to Franklin and they did not want to be transferred. They had been there. They were permanent teachers and they did not move.

When they transferred out, or when they retired, sometimes we sent temporary teachers in. I have one building over in a predominantly Negro section of the city with a white principal who is doing a magnificent job. She asked for temporary teachers, and why? She said, Mrs. Lyons, don't bother about trying to give me people from the normal road; I would rather have temporary teachers because I believe that I can help train those teachers better than I can the others.

Q Just to follow up on your last answer just before this portion of it, you said that they were in the northwest; you had a lot of permanent teachers who were there?



Q. Or Czechoslovakian?

A. Yes.

Q. But with respect to the integration of the school such as a small elementary school, schools over which you had supervision, did you ever have occasion to find a situation where forced integration resulted in better education?

A. MR. KUNTSLER: Your Honor, I think that question needs defining. I do not know what forced integration is-- whether it is ending segregation de jure or what it is.

MR. REDMON: Let me go back, Mrs. Lyons.

BY MR. REDMON:

Q. You indicated on cross examination that there were times when a white parent would come to you and say, "Mrs. Lyons, my child is not ready to go to school".

A. Right.

Q. To a Negro School?

A. That is right.

Q. Now, had you forced such a child to go to school, would this be of any educational advantage to this child or the children in this school?

A. None, whatever. The child probably would have become neurotic.

Q. Now, as you know, let me ask you--do we not operate under the neighborhood school concept especially with elementary schools?

A. That is right, that is the concept that we operate under.

Q. You have been a teacher, principal and an assistant superintendent for fifty years now. Would you please tell us what your view is of the advantages of the neighborhood school in the elementary grades?

A. I think that a child in the elementary schools is very close to his home. Therefore, I feel if he goes to a school near his home, that is best for him. He is quite attached to his family.

If we have a neighborhood school, the parents of the child become a part of the neighborhood pattern. They participate in the activities of the school, and they know just what is going on. A child who is in a neighborhood school knows all about his neighborhood, he knows the neighbors in his community; he is perfectly familiar with them, and it is really better all around for the child.

If he is transported across town several miles to another school, he feels bereft of the protection of his home. Our concept is also that young children, elementary school children, should be near enough to be home

for lunch at 12 o'clock, and for a quick check by the parents. That is out of the picture if the child is too far away from home.

The principal of a neighborhood school is also a more powerful person because she gets to know the people in her neighborhood, she knows the offerings that they can bring to the school, she knows the possibilities for leadership, she knows what she can do to help educate the parents of her children. They are near enough for her to come into her for meetings, draw around in the afternoon for discussion periods.

That is impossible when children are so far away and the parents cannot get to the school.

MR. REDMON: I have nothing further, your Honor.

MR. KUNTSLER: Just one, your Honor.

BY MR. KUNTSLER:

Q. Just to carry that one step further for a moment, if you were advised by experts in the field that it was very destructive for a Negro child to attend an all-black school, it was destructive emotionally and destructive educationally, and you were convinced of this, would it still be your testimony that you would rather have that child go to that school just because it was in his neighborhood, even if you were convinced of that fact and convinced he

would get a better education?

A. I cannot answer that. I know there has been a great deal that has been written about these big schools and transporting children across, you know, and out into the country. I know that. I know that. But I still held to my point and I have come up through the years with neighborhood schools and I believe in them.

I would have to have -- to be talked to and be given many good reasons for otherwise doing.

Q. But you would be prepared to listen to experts in the field?

A. I am always prepared to listen to anything for the good of children.

Q. If you were convinced they were right, you might change your neighborhood school concept?

A. I would be prepared to listen to experts for the good of the children. That is what I would like to say.

Q. If they convinced you, you would be willing to give up your neighborhood school concept?

A. Well, I think any of us who are really dedicated to what we are doing--and I have been dedicated to what I have given my life for--I should have the right to listen, but I have listened for fifty years and I watched things for

fifty years, and I watched the places where we put down schools in communities for children, where we put a million dollar school in a Ghetto, and folks said, Why there? And I said, why, because that is where the school is needed.

I have seen the communities gather in and enjoy the school and I have seen the community grow because the school is there and it belongs to them. I have seen people in the old Southwest Washington before they built these fine apartments down there; I have seen people down there who did not know anything beyond the court, the alley in which they lived. I have seen them have the old small wood school opened up to them at night and meetings held and I have seen them awaken and take a new lease on life.

So, I would have to go along ways before I would change my opinion.

Q. You are talking about adults?

A. I am talking about the adults and the children, because the children lead the adults into the school. If they are there in the community, if the school is there, it means something to the adults.

Q. But if you were convinced--

A. I cannot answer that, attorney, may I have that privilege?

Q. All right.

MR. KUNTSLER: That is all I have, your Honor.

It is further ordered that the defendants' objections to the admission of plaintiffs' exhibits A 4 and A-18 be, and the same are hereby sustained.

It is further ordered that plaintiffs' exhibits A-4 and A -18 be marked EXCLUDED and retained in the record, pursuant to the provisions of Rule 43 (c) Federal Rules of Civil Procedure.

It is FURTHER ORDERED that the testimony of Dr. Coleman in so far as it relates to plaintiffs' Exhibits A-4 and A-18 be, and the same is hereby excluded from consideration as evidence in this case.

PER CURIAM: After thoughtful consideration and with much reluctance, this Court feels constrained to exclude the Office of Education survey prepared pursuant to the Civil Rights Act of 1964 and the summary thereof from evidence because of the inability of this Court to make available to the defendants all of the data which the defendants demand with respect to that survey.

So that there will be no misunderstanding, however, this ruling does not indicate the Court's position with reference to use of the report for purposes of cross examination. A ruling on that issue will be forthcoming when and if it is raised.

The Court will fill its order.

MR. KUNTSLER: Your Honor, are you foreclosing the

question of judicial notice?

THE COURT: Well, I have been through this from all aspects and I am concerned that the data on which defendants demand cannot be made available to the defendants.

I am afraid, although I am not convinced, but I am afraid that this may raise some valid objections to the admission in evidence of the report and out of an abundance of caution I am ruling out the report for this reason.

Now, as far as whether or not this report could be used for the purposes of judicial notice, I really have not focused on.

Perhaps counsel in connection with their representations and briefs at the close of this case might want to focus on that problem.

But I am simply ruling on it as it relates to its admission in evidence in this case.

All right, sir. Will you call your witness, Mr. Cashman, please?

MR. CASHMAN: Yes, your Honor.

Call Dr. Lennon, please.

Thereupon

ROGER T. LENNON

a witness called by counsel for defendants, being first duly sworn, was examined and testified as follows:

THE COURT: Spell that, please.

THE WITNESS: L-e-n-n-o-n.

BY MR. CASHMAN:

Q. Dr. Lannon, where do you live?

A. I live at 83 Hawthorne Place in Briar Cliff, New York.

Q. Dr. Lannon, what is your present occupation?

A. I am a vice president and director of the test department of Harcourt, Brace & World, a Publishing Firm in New York City.

Q. Dr. Lannon, would you briefly describe to the Court the duties that job entails?

A. As Director of the test department, my job extends to every aspect of the publication of standardized educational and psychological tests.

This includes the making of decisions with respect to which tests shall be published, the evaluation of manuscripts, the conduct of the necessary experimentation and research that led up to the publication of a standardized test, the test development enterprise, the conduct of relationships with the school systems that use our test, and the direction of a related test scoring and analytical statistical service.

Q. Now, Dr. Lannon, how long have you been Director



of testing at Harcourt, Brace & World?

A. I have been the Director of the test Department since August of 1948. At the time when I assumed that position, the company was World Book Company. World Book Company merged with Harcourt-Brace in December of 1960 to become the present Harcourt, Brace & World.

I continued after the merger to serve as Director of the Tests Department and was named a vice president of the company in 1962.

Q. How long have you been with both Harcourt-Brace and World Book Company?

A. I started with World Book Company in May of 1937 and I was employed there until early 1942 at which time I left because of the war time interruption.

Q. And when did you return to World Book Company?

A. I returned in August, 1948.

Q. Now, Dr. Lennon, concerning your educational background, would you indicate to the Court where you obtained your Bachelor's Degree?

A. I received my Bachelor's Degree from Fordham in 1935.

Q. Dr. Lennon, where did you receive your Master's Degree?

A. I received my Master's Degree from Graduate School of Fordham University, 1937.

Q. And what was the emphasis, what was your major subject in your Master's acquisition?

A. I was in educational psychology and measurements which was the designation of the department in the graduate school.

Q. Now, there came a time when you acquired your Doctor's Degree?

A. Yes.

Q. When and where?

A. That was obtained at Teachers' College of Columbia University, the degree was awarded in 1952, although actually my course work had been completed in 1941, substantially.

I then interrupted my study there for the war and various other reasons.

Q. During your military experience, what was your function?

A. I was employed by what was variously known as the Air Materiel Command, or the Air Service Command or the Air Technical Service Command of the Air Force in Charge of the Personnel Testing Unit.

Subsequently, I was in charge of placement of civilian personnel, subsequently also including merit rating and efficiency rating, and ultimately the so-called "termination of the force program."

In other words, with responsibility for a variety of personnel services for the civilian personnel of the Air Materiel Command.

Q. Was that in the branch of the service known as the Air Force?

A. That was in the Air Force; yes, sir.

Q. Now, have you ever done any teaching at all, Dr. Lennon?

A. Yes, sir. I have taught most recently the Syracuse University, summer courses in psychological and educational testing.

During the war years, I taught a couple of courses in what was then known as the Engineering Management Science Wartime Training programs, courses in personnel measurement and industrial psychology.

Q. Now, Dr. Lennon, would you indicate your membership in associations in connection with your field of endeavor?

A. My memberships include the American Psychological Association, the Eastern Psychological Association, the New York State Psychological Association, the American Educational Research Association, National Council on Measurements in Education; American Personnel and Guidance Association, as well as local auxiliaries of several of those organizations. These would be, I think, the most relevant ones.

Q. Dr. Lennon, you indicated that you were a member of the American Psychological Association?

A. That is correct.

Q. And is that psychological association broken down into specific groups of membership?

A. Yes, sir. It is organized into twenty-odd divisions, each of which represents a specialty area within the field of psychology.

Q. And within that breakdown, doctor, would you indicate to the Court where you are listed?

A. Yes, I am a member of Divisions 5 and 14.  
Division 5 is the Division of Evaluation and Measurements.  
Division 14 is the Division of Industrial Psychology.

Q. This Division No. 5, have you ever been an officer in there?

A. Yes, I have served as an officer in Division 5.

Q. I see.

Would you indicate to the Court to what journals or bulletins you may have contributed articles?

A. Yes. I have contributed articles to the Journal of Educational Psychology, the Psychological Bulletin, Journal of Applied Psychology, Educational and Psychological Measurement; Journal of Educational Measurement; there may be others.

Q Dr. Lannon, in connection with the composition of tests, have you played any part at all?

A I have served as an author of tests during the service with the Air Force to which I alluded sometime ago.

In my role as Director of the Tests Department, I have not heretofore served as a test author in the sense of a person composing tests, but I have been responsible for the technical endeavor, the direction of research in connection with the building of tests.

Q Dr. Lannon, have you had any articles in this field published?

A Yes, sir, I have had numerous articles published in the field of test development, test interpretation.

Q Would you give the Court a brief illustration of your contribution in this area?

A Yes. May I refer to some information?

Q By all means.

A I will read in more or less chronological order the titles and the publications in which these several titles have appeared.

A paper entitled "Equating Non Parallel Tests." It appeared in the 1964 Year Book of the National Council on Measurements in Education.

A paper entitled "Norms" 1963, which was an

address delivered at the invitational conference on measurement and printed in the proceedings of that conference.

A paper entitled "Measurement, Promises to Keep" originally delivered at the Western Regional Conference published in the Proceedings of that conference.

A paper--

MR. KUNTZLER: Your Honor, to save time, Dr. Lennon gave me a list of all his published articles, books, and so forth, which is quite long. If everything is going to be read in, I would submit perhaps this could be offered in. I have no objection.

MR. CASHMAN: Your Honor, while I will offer it, I just wanted the Court to hear firsthand the highlights, that is all I am seeking by this line.

THE WITNESS: Then just let me make a selection if you will.

MR. CASHMAN: Yes, a brief selection.

THE WITNESS: The ones that seem most relevant-- four or five.

A paper entitled "Standardized Testing" that appeared in the Bulletin of the National Association of Secondary School Principals.

A paper entitled "A Critical Analysis of the Concepts of Comparable Scores," which appeared in the American Psychologists.

"The Relation Between Intelligence and Achievement Test Results For a Group of Communities" appeared in the Journal of Educational Psychology.

A paper entitled "The Stability of Achievement Test Results from Grade to Grade" appeared in Educational and Psychological Measurement."

These, I think are perhaps the most relevant illustrations, Mr. Cashman, of papers in the general realm that we are concerned with.

Q. You have brought with you, have you, Dr. Leunen, a compilation of your professional addresses by title?

A. That is correct.

Q. I see. Now, referring to the last page of that document; I ask you to read under 1967, your address to be delivered at the American Personnel and Guidance Association in Dallas, Texas.

A. This is participation in a panel on the topic "Testing the Disadvantaged." "The Test Developer's Point of View."

Q. And that is to be delivered.

A. That is to be delivered this coming spring at the Annual convention of the American Personnel and Guidance Association.

MR. CASHMAN: Your Honor, in order to save time,

continuity, this extended measurement that lets us express the child's performance on a single scale, we have the wherewithal really for measuring growth, not of course with the precision that we measure physical growth, but with a degree of confidence much greater than we can get from intermittent locally made tests.

Q. Now, in relation to the District of Columbia, the Stanford Achievement tests at grade 6, and the metropolitan achievement tests grade 2, the Stanford Achievement Tests in Grade 9, and the Stanford Achievement Test in Grade 11, are examples of the kind of tests that you are talking about that is given in the District of Columbia.

A. Yes, sir.

Q. Now, in terms of testing in general, Dr. Lennon, would you briefly describe to the Court what has been the progress of testing, when the first appeared, and its progress in school systems since the time the first made its entrance?

A. Well, it is common to trace the use of intelligence tests in the schools to 1918 which was the year in which World Book Company published the first Otis Intelligence Tests.

The Introduction of Achievement Tests in a formal sense, by which I mean in the sense of its use of commercially



getting along.

Secondly--well, let me back up to indicate that in the nature of this testing, it is possible to identify the strength and weaknesses of the learner so that intensified instructional effort can be applied in those areas where weakness is manifest, and at the same time the guidance of the youngster toward career and educational planning can capitalize on those areas where there seems to be special strength.

Secondly, from the standpoint of the school administrator, the achievement test is provided a yardstick that helps him to evaluate the effectiveness of the instructional program.

It gives the principal or the supervisor, or the superintendent evidence that is less subject to bias, let us say, than individual teachers' own appraisals as to how well the school is doing its job.

It helps the administration and supervision to plan curricular modifications, to judge whether various curricula are effective with various types of students, and so on.

In contrast to, let us say, the test a teacher might build for herself, the standardized test offers one additional advantage which we consider to be a very great advantage, which points to another use. It provides for continuity of assessment over the school year of a child and by virtue of this

goals of instruction are and seeks to build exercises that will sample from its predetermined field so to speak.

Q. And are you speaking now, Dr. Lennen, of a national consensus of what the educational goals are?

A. This is correct. And of course you realize that in the United States we do not have such a thing as a national curriculum. The determination of curricula basically is a local prerogative. Therefore, you must expect variation from school districts to school district or state to state, and the art of the testmaker really is to find this area of common concern to identify the goals and to judge whether there is sufficient uniformity in a given field to permit the development of a test that will be very broadly useful.

This does not always happen.

Q. DR. LENNEN, let me ask you this: What use can a functioning school system make of an achievement test of the type of which we are speaking?

A. The first and most obvious use is in studying the progress the individual pupil is making. We want to know how he is getting along in reading, in spelling, in arithmetic and so on. And the achievement test is the device for eliciting this kind of information, so the first purpose to be served is that of helping the teacher get a better, more accurate appraisal of how the youngster is

persuaded tests, dates back to about 1920, although the use of standardized achievement tests distributed by individual authors or universities, can be traced back to 1908 or 1910, but in a significant sense which came about only when commercial publication of these instruments appeared, 1920 is probably as good a beginning date as any to adopt for the use of achievement tests.

During the 1920's perhaps as many as 1,000 different standardized tests were published by again, possibly as many as 25 to 30 different publishing organizations.

There were achievement tests developed and published in a great variety of fields.

There were probably a dozen to fifteen intelligence tests published in the 1920's, and in general the use of tests increased fairly steadily.

The number of test publishers who persisted in the field in any significant fashion was not large, actually for the entire history of test publishing at any given time, not more than seven or eight publishers would have accounted for eighty, eighty-five per cent of the tests used in schools.

There were no statistics collected on the magnitude of the testing industry until about 1945. At that time the American Textbook Publishers Institute initiated

an annual survey of educational publishing generally, one part of which was a survey of the extent of testing, of test sales.

To give you an idea of the rate of growth in the use of tests over the past 20 years, as I say, they are the only years for which we really have data, I will report that in the first year surveyed, 1945, the sales of the testing industry were reported to be about \$2 million.

In 1965, the last year for which there are industry figures, the comparable figure was \$16,300,000.

Now, even this figure is not a full indication of the extensiveness of the use of tests because it does not include for example testing such as is done by the College Board or National Merit Scholarship Program, or American College Testing Program.

It includes only that testing that is represented by sales from the various publishers' catalogs in contrast to testing in secure such as the College Board.

There are estimates of the numbers of tests administered to pupils in elementary and secondary schools which estimates are not entirely unambiguous because the definition of test and definition of answer sheet which I will not go into, are a little cloudy, but it would not be very far wrong and would probably be wrong on the conservative

side to believe that in 1963 somewhat over \$200 million standardized tests were taken by pupils in the elementary and secondary schools of the country.

To sum up, Mr. Cashman, the history of the use of testing has been one of very steady growth and expansion in the use of standardized tests, including both achievement tests and tests in this area of intelligence or aptitude.

Q. Dr. Lannon, in terms of the recent expansion in the areas of testing, has the Federal Government contributed in any significant way?

A. Most certainly it has, Mr. Cashman.

The first forceful representation by the Federal Government with respect to testing would be the National Defense Education Act, 1958, 1959, Title 5 of which provided significant funds for the support of testing and guidance activities in the secondary schools.

Then, as you may recall, in the revision of NDEA, the scope of the Act was extended to include elementary grades as well as secondary, and this proved a substantial stimulus to the use of tests.

The position was taken in the organizational NDEA and sustained in the revision that it was decidedly in the national interest to do everything possible to uncover talent of whatever kind and that this would be facilitated and improved if funds were made available to schools to help

them expand their testing programs and to provide training for guidance personnel who could make good use of the test results.

Q. Does any other congressional enactment parallel the contribution of the NDEA in the field of testing?

A. Yes, sir; the Elementary and Secondary Education Act under Title I as you know, provides support to school districts that are engaged in projects designed to improve the educational programs afforded to underprivileged children.

One feature of the Title I declaration is that any projects which are submitted for support under the Act must have built into them provisions for evaluation, and the guide lines that accompany the Act spell out what is intended by this requirement for evaluation and the guidelines define evaluation as customarily ;to consist of administration of tests before and after the project so that there will be evidence as to how effective and helpful and useful the project will have been or the contrary.

Now, additionally, I will mention that the Manpower Development Training Act provides funds for the support of testing programs to help in the assessments of the talents that unemployed adults, particularly may have and in the defining of their educational needs, the eQuating Oppor-tunities A ct provides funds for the Support of considerable appraisal and diagnosis and assessment of candidates for the

Job Corps and of enrollees of the Job Corps as they go through their various programs.

So the answer is very decidedly yes, Mr. Cashman, that the Federal Government has, through its various enactments given very substantial support and through its operation of the various cooperative research programs in the Office of Education, this same general attitude is very clearly manifested.

Q. Dr. Lannon, what is an aptitude test?

A. The term "aptitude test", Mr. Cashman, is not one that has a very precise definition in the language of the profession. Partly and obviously because the concept of aptitude is its subject to certain variations in interpretation.

The most truthful way of thinking of aptitude tests, in my opinion, is to think of tests which are extraordinary for the purpose of helping to judge the likelihood of success a person will have in a particular educational program, or occupation or training endeavor.

In other words, I think it is more useful to have a concept of aptitude that is rooted chiefly in the use and the purpose rather than in the precise nature of the content.

And, if one were to look, for example, at what I



suppose are the most widely known and used tests that include aptitude in the title, namely, the differential aptitude tests, this point will become clear, because the differential aptitude tests include, among others, tests of spelling, tests of English, which customarily and casually, so to speak, we would not ordinarily think of as aptitudes, the layman and to some extent the professional has tended to invest the notion of aptitude with some connotations of innateness or unchangeability and so on.

The better practice, I think, in labeling tests and in classifying tests is to look to the use to be made. So I would say any test that is used as a predictor of future success may be thought of as an aptitude test.

And that would include perhaps you may think paradoxially these tests that I have described as achievement tests, perfectly sensible to think of the Stanford or metropolitan achievement test as a predictor and thus an aptitude test.

Indeed, if one were to address himself to the problem of deciding which youngsters would take algebra courses rather than general mathematics courses or no mathematics at all, a very sensible way to do it is to look at scores on an arithmetic test, and take those into account and in doing that you are essentially saying these are measures of



aptitude for learning algebra.

Q. Doctor, then, under the clarification of aptitude tests as that has been expressed by you, would an intelligence test be considered likewise an aptitude test?

A. For, I would say, most purposes for which we use the tests because intelligence tests in the schools, they should properly be considered aptitude tests.

Now, I would say that occasionally there is use of intelligence tests, and more particularly the individual intelligence test, for purposes that are not so obviously those of prediction.

Let us say we have cases where there is a wish to attempt to diagnose brain damage or something of the sort, where the emphasis is on deeper understanding of an individual with only subordinate or minimal concern for what predictive significance it may have.

So, again, I suppose what I am saying is that what I am saying is that this same test may have uses that are aptitude uses and it may have other types of uses.

Q. Dr. Lennon, you have been indicating the predictive value of tests. Could you give us a definition of what you mean by the predictive value of a test?

A. Let me attempt to begin by citing one or two concrete illustrations. A useful one I think is college board

tests which are familiar to all of us.

Let us consider how the college boards came into being and why. They came into being because college admissions people felt that they wanted something other than high school marks or high school principal's recommendations which characteristically would vary a great deal on quality, dependability and so on.

So they said it would be useful if we had some common yardstick which will enable us to appraise a youngster from whatever high school he may come.

Now, what should be the properties of this that would make it relevant and useful for that purpose?

Any of us would say, well, this ought to be a test that will help us to tell which youngsters will get along well in college so this has become the goal of the college entrance examination, to predict success in college, to help the college admissions person look at the candidate and decide what his likelihood of getting along would be.

So, here we have this illustration of the predictive utility of an instrument.

A Civil Service examination would afford another good illustration of the predictive utility of a test.

If we want to hire a typist or stenographer, we will measure their proficiency and in doing so, we will assume that that gives us a clue as to how well they will perform on the job.

Again we are talking predictive value. If we want to hire a group of persons who do not now have the skill they will need on the job but who show promise of acquiring those skills on a training program, we want an instrument that will predict this success.

So, by the predictive significance we mean the ability of a test to rank persons pretty much in accordance with their ultimate success, and to measure this kind of predictive significance; obviously we sit down and follow up the results of the testing and see to what extent they do indeed have their predictions borne out in experience.

Q. Doctor, would you explain to the Court what is meant by the diagnostic significance of a test?

A. I would say that the best usage of the term "diagnostic" is to denote a sub-class of achievement test. We most commonly think of diagnostic tests in connection with certain areas of learning, most particularly reading and arithmetic.

There are more diagnostic tests offered in the reading and arithmetic fields than I would say all others combined.

A diagnostic test, I think is most useful as a more penetrating analytical type of measure than the achievement test.

Again let me illustrate in the concrete. The Stanford Achievement test provides a measure of a pupil's reading ability.

Now, let us suppose that we discover a youngster who is reading poorly and the reading supervisor or the teacher or the remedial reading specialist says "What is the Youngster's trouble/"

I will probably more thoroughly, more deeply with a diagnostic instrument, let us say, get accurate measures of the youngster's word skills, his vocabulary control, his visual perception, and so on and so on.

What you are doing is really putting a microscope on the performance that will enable you to differentiate among several aspects.

Now, diagnostic takes on a little different connotation when one comes to think about the clinical instruments, but for the school use of tests, the meaning that I suggested here seems to me the relevant one.

Q. Now, Doctor, would you indicate what an intelligence test is?

A. Well, there are several ways I think of approaching that. Historically an intelligence test has been thought to

be a measure of hypothesized general learning ability.

Now, if you were to go back in the literature, you would discover that there has been and continues to be some lack of consensus as to just what it is we mean by intelligence and in a sense you might say each expert has his own definition and they tend to place greater or less stress on one or another aspect of behavior that we might call intellectual or cognitive or adaptive if you will.

Now, the first test is in this general category that was issued here, and would include, for example, such tests as the original Stanford revision of Binet. <sup>P. 3</sup> Hintner Patterson, and their authors referred to them as intelligence tests even with full realization that their definitions of intelligence might not agree completely with somebody else's.

Over the years we have learned more and more about this concept or more particularly we have learned more about the behavior of these tests that we call intelligence tests.

We have a better appreciation and understanding of the kind of influences that can affect scores on them, whereas in the early work in this field it was fairly common to assume that what was being measured was something pretty permanent and constant and fixed and quite likely hereditary in character.

The general movement in the field I should say has been toward an increased recognition of the fact that performance on these tests is indeed influenced significantly by many of the things that whatever is being measured is not this unchangeable characteristic of an individual, and I suppose one might say that as we build these understandings of what the tests measure, in essence, we are modifying our definition of intelligence, into an optional definition and saying intelligence is whatever the tests measure, then as we change our notions of what the tests measure, we are changing our concept of intelligence.

I am afraid, Mr. Cashman, this has gotten to be a rather wordy effort to answer the question, but you will conclude that it is not a simple question to answer.

Q. I know it is not a simple question, Dr. Lennon. There has been considerable discussion in this lawsuit already about what intelligence is, about what an intelligence test is.

That brings me to another area, what use can a school system make of an intelligence test result?

A. Well, I think the place to begin an answer to that is with a little declaration of what the teacher's task is.

A teacher on the one hand comes into the classroom

with a course of study, curriculum, certain goals that are established as the goals they try to have the youngsters in the class attain in the time that the youngsters are under her tutelage.

Now, every teacher just like every parent or every sensible adult, knows that people differ from one another, they differ in almost any characteristic that you could name, their height, name, color of their eyes, the speed with which they can run up and down stairs, and their ability to learn, their ability to learn the kinds of things that the school considers important for them to learn, their ability to play football and so on and so on.

Now, the teacher really realizes that this variation among pupils is significant with respect to her instructional effort.

She knows that she cannot expect the same level of attainment, the same speed of attainment, the same quality of understanding and learning from all pupils.

They just do not bring to the classroom the same makeups, whether we are talking about cognitive skills or curiosity, creativity, motivation, interest--anything.

Therefore, the teacher realizes that she, if she is to discharge her duties responsibly and fully, has to take account of this variation and has to temper her



instruction to the needs and the level and the qualifications of each learner in so far as this is practicable.

Q. And how is this affected by the use she may make of the intelligence test?

A. Now, the intelligence test is one source of information about this learner. It provides information about some dimensions that are relevant to the teachers' task because it tells about this learner how he or she here and now today stacks up with respect to abilities that are important for the mastery of these curricula materials, therefore the performance of the child on an intelligence test so-called, or school and college abilities test to name another one used here, test of general ability, they are all the same kind of instrument basically; performance of a child in this test gives the teacher one piece of information that is useful when properly interpreted and understood in telling the teacher how to make the instructional approach to the child, what kind of instructional materials are likely to be suited in terms of level of learning and so on.

THE COURT: Mr. Cashman, I do not want to interrupt you, but I am not getting this intelligence test bit.

What is the difference between achievement tests, aptitude tests and intelligence tests?



I understand achievement test seeks to measure the pupil's progress toward a set goal of instruction. That seems clear enough.

Aptitude tests predict achievements of the pupil. That seems clear enough, and diagnostic tests, as I understand it is merely achievement tests in depths.

THE WITNESS: Yes.

THE COURT: But the intelligent tests are missing. Perhaps you can define it in terms of these other tests or by distinguishing the other tests.

THE WITNESS: Your Honor, would some of the difficulty be dissipated if we forgot the term "intelligence tests" entirely and spoke of them as scholastic aptitude tests?

THE COURT: That certainly would. Is that what they are?

THE WITNESS: This is for 98 per cent of the applications, it is perfectly proper to think of what we call intelligence tests as scholastic aptitude tests, a special breadth of aptitude test.

And, indeed, there is a fairly strong body of opinion in the test-making profession that urges very strongly that we do exactly this, that we stop talking about intelligence testing, and define the instruments as

measures of scholastic aptitude. And this permits us to bypass this issue that has just now presented such great difficulty in producing an explanation of attempting to define the concept of intelligence.

BY MR. CASHMAN:

Q. Dr. Lannon, what does the scholastic aptitude test contain--that is, say distinctly different from the other tests that you have described?

A. I would say that in the building of a scholastic aptitude test, the effort is made to include material that will be less subject to the effect of specific in-scholastic learning than is the case with achievement tests.

If we were to look, for example, at the Otis, or the tests of general ability, indeed any of the tests in this realm, you would observe items of this kind.

The shoe is to the foot as a glove is to what?

Now, no child is ever taught how to answer a question like that in the classroom? What kind of talents are called upon to answer a question of this kind, ability to perceive a relationship, to abstract from a set of particulars, to apply a generalization or abstraction to a different context, and so on, all of which we take to be manifestations of this intellectual cognitive ability, but measured through tasks that are not influenced by what

the child is taught in school.

Of course, I am saying nothing about efforts to coach children on this type of material, which is an entirely different problem.

There are commonly included measures of non-verbal reasoning, usually through special perceptual tasks, tasks where analogous relationships are presented in media other than words, but where the inductive process called for is presumably the same.

There are problems where the success of the child responding or solving the problem depends upon his ability to see relationships, to develop new methods of attack, and so on, again quite different from the sort of thing he is specifically taught.

I think what confuses a great many people as they look at so-called intelligence or scholastic aptitude tests is that, indeed you will find in these tests questions that look very much like questions in tests that are labeled achievement tests.

Otis, for example, would have some arithmetic problem solving exercises. It would have some more or less straightforward vocabulary exercises. And so it is perfectly natural to say well, this looks very much like the arithmetic test in Stanford or the vocabulary test in

Metropolitan.

What is the difference?

I would say the explanation is that we resort to some content of this kind because it proves to be indeed very discriminating with respect to this supposed ability to learn.

It is dependant, to some extent, on in-school instruction, but the techniques of building these exercises that look like arithmetic exercises or vocabulary exercises, does involve the attempt to put the instructional level-- now this is going to get confusing, but let me say it--to put the instructional level of that material a year or two below the mental age level.

Now, let me tell you what I mean. You can include arithmetic problems in a test that is called an intelligence test, but the difficulty of the item will center on the conceptual process, the problem analysis, not on the arithmetic skill or computation.

That will be couched at a level several years or grades below the thinking level, if you will, of the item.

Now, I think perhaps, Your Honor, I should ask you if I have confused you utterly now with respect to the intelligence tests, or if I can come back.

THE COURT: No, I am beginning to understand. I do not want to interfere or interrupt any more. Because I do believe sooner or later someone will testify as to the difference between verbal and non-verbal.

MR. CASHMAN: Yes, that is coming.

THE COURT: All right.

BY MR. CASHMAN:

Q. Dr. Lennon, is it fair to say that the scholastic aptitude test--let me restate the question:

Is it accurate at all to say that the scholastic aptitude test is an attempt to measure a child's ability to reason?

A. Yes. I would say it is, in a sense, accurate, and the sense in which it is accurate is that among the types of intellectual processes that we would seek to tap in a scholastic aptitude test would be reasoning ability, yes.

Q. Now, doctor, you have before you a copy of Plaintiff's B-10 which is, as I say, the city-wide testing schedule?

A. Yes.

Q. Would you indicate to the Court what tests on that schedule at each level are scholastic aptitude tests?

A. Well, beginning with Metropolitan Readiness Test, I think this would most fruitfully be considered in

the realm of aptitude tests. The design of Metropolitan Readiness test is such that it does not seek to measure what the child has learned as a result of any formal in-school instruction. Its purpose is to identify those youngsters who, along certain dimensions, seem to have reached a sufficient level of maturity so that their progress in beginning formal reading instruction will be rapid, those who need to be buttressed with respect to certain visual auditory perceptual skills, and so on.

So, I would say the readiness tests very definitely fall in the realm of these aptitude prognosis predictive tests.

Stanford tests administered in the 6th grade clearly fall in the realm of achievement tests. The purpose is to find out how far along the pupil has come in the goals of reading, arithmetic and spelling.

The Otis test is in the Aptitude domain.

Metropolitan Test is given in Grade 6, definitely in the achievement area.

I do not recall, Mr. Cashman, did you want me to continue on tests other than the Harcourt-Brace tests and how I would be disposed to classify those?

Q Well, rather than that, Doctor, if you would address

yourself, please to a review of the entire document but only singling out those tests that you would consider scholastic aptitude tests, whether or not they would be published by Harcourt-Brace.

A. Tests of general ability administered in Grade 6 I would so classify.

The School and College ability tests administered in Grade 4.

Metropolitan Readiness test is given in Kindergarten.

School and College ability test is given in Grade 9.

The differential aptitude test is given in grade 8.

Tests of general ability in Grade 7 and tests of general educational ability in grade 9.

School and college ability tests in grade 11.

Tests of general ability in grade 11.

The Flanagan aptitude classification test is in grade 10 or 12. I would be disposed to put all in the general category of aptitude or predictive instruments rather than in the category of measures of specific outcomes of instruction in the classroom.

Q. Now, in terms of result, among the school as

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particular aptitude tests you have identified, Doctor, which ones give a so-called IQ result?

A. The Otis quick scoring mental ability test gives an I.Q.

Q. And how could you give us the generic description of the results as in score form of the other scholastic aptitude tests?

A. The school and college ability test yields a percentile band as they call it.

The differential aptitude test of the results expressed in terms of percentile ranges, within grade populations.

The tests of general ability I am not sure of, nor the tests of educational ability, but I believe that their results are expressed in terms of percentile ranges and stamene, which is another method of interpreting score.

The Flanagan aptitude tests I also believe have results that are results in stamene not IQ's.

Q. So far in this trial, Dr. Lennon, we have made reference to the I.Q. result, the percentile band result and percentile range result.

Would you kindly give a description to the Court of what these terms mean?

A. Yes, the I.Q. is, of course, the most time-honored

and oldest method of interpretation of a score on a so-called intelligence test.

As you know, I.Q. stands for "Intelligence Quotient." It is called a quotient because of the way in which it was originally calculated.

One of the fundamental contributions of the first test was the notion of mental age; Binet deserves much of the credit for that and Dr. Kerwin in this country, for seeing that it would be possible to express a person's degree of mental maturity by seeing whether he could answer or perform tests that typical persons at 8 or 10 or 12 or 14 years of age could answer or perform.

And, according to the level of task the person could manage, one could assign this mental age to the performance.

And the early individual tests were evaluated in this fashion.

Then it was observed that it would be useful to have a way of expressing not just the level of development, but rate of development, and a Dr. Stern is commonly given the credit for saying well, why don't we compare this subject's mental age to his real chronological age, and we will have a

ratio or an index or a quotient that will be a measure of his relative brightness, his relative rate of mental development, and this ratio of mental age to chronological age is the ratio that has commonly now been converted to an I.Q. For convenience, the ratio was multiplied by 100, and this is how it comes about that normal average status is expressed as 100, the child whose mental age is the same as his chronological age.

Or, if I could express it a little more precisely, the child whose mental age is the same as the mental age that is typical for children of his chronological age.

This is a distinction that becomes important in the ten years. This child has a ratio of 1, which is as I say for simplicity and convenience, expressed as 100. This becomes normal performance.

Then we proceeded to learn how these ratios tend to distribute themselves in an ordinary population so that we can say 160 on this scale is extraordinarily rare, whereas a 105 or 108 occurs with such-and-such frequency. So we get a picture of how these I.Q.'s distribute themselves.

Now, in the years beginning in the early twenties, and with increasing adoption by the various test-makers along the way, we have resorted to other computational ways of obtaining this measure of brightness so that, for almost no test in wide use today do we calculate an I.Q. in this mental

age to chronological age fashion, we have resorted and converted almost entirely to a type of score referred to as a deviation I.Q. And we can elaborate on that if you will.

But the notion is still one in which average status is represented by a value of 100, where the characteristics of the distribution are known for a normal population so that we can say 16 per cent of an average population will have I.Q.'s above 116, and 16 per cent values below 84 and so on.

Now, this leads us naturally to a discussion of percentile range or of other types of interpretation. When I said to you, as I did a moment ago, that it becomes possible to say that 16 per cent of an unselected group will have I.Q.'s above 116, let us say, this happens to be pretty accurate for most tests, this is equivalent to saying that we could call an I.Q. of 116, the I.Q. that separated the bottom 84 per cent from the top 16 per cent, and it would only be a very easy step then to say, well, that 116, we can think of as the 84th percentile, and by the same reasoning, an I.Q. of 100, which is an average would separate the top half from the bottom half or 50 per cent, and the I.Q. 100 is, therefore the same as percentile range of 50.

The percentile range system generally is one in which a score is interpreted as representing the per cent of scores in a specified group that fall below the score in question.

Percentile of 95, therefore, connotes a score superior to that made by 95 per cent of whatever the group is.

Now, did you ask for other systems of interpretation, Mr. Cashman? There is one other that is fairly common which I will note briefly. It is the so-called Stamine System, which is a device whose chief merit or merits are two: Simplicity, it is a 9 point scale, and secondly, equality of units, which is a technical issue that I think I will not go into unless someone wants to pursue it.

Q. I do not think it will be necessary, doctor, because it is a matter that has not been raised before in the suit.

Just briefly calculating your recitation of the number of scholastic aptitude tests, I see that a child would normally encounter during his progress from grade 1 through grade 12 in the District of Columbia Schools, I see the number is approximately 11 or 12.

Doctor, would this be an experience in terms of exposure to scholastic aptitude tests that would be more or less common throughout school systems in the United States?

A. I should say this represents perhaps somewhat more frequent use of aptitude tests in the course of a 12-year history than would be typical throughout the United States.

A fairly common pattern, perhaps one close to average would scale the addition of readiness tests in the first grade, some measure of mental ability or scholastic aptitude perhaps in grade 3 and 6, maybe differential aptitude tests in Grade 10,9 or 10.

From there on, the dependence then in this category would be for the college-going group on tests such as preliminary scholastic aptitude tests.

So, if, indeed, although I must say I had not interpreted this to mean every child gets every ten or eleven --

Q. Yes, that is a fallacy in the question I propounded, doctor, I am glad you cleared it up.

A. This would seem to be a little more frequent than might be characteristic of most school systems.

I may say, if the school system has to depart from the average, I would rather them depart this way than the other way.

Q. Would that be out of business reasons or education?

A. It is a happy combination of both, I think.

Q. Doctor, did you give us an explanation of percentile band?

A. I did not, Mr. Cashman. But that follows very easily from the reference to percentile range. It is well known that any test score involves a certain amount of error, measurement error we call it.

The tests are not perfectly reliable. If the child is tested today and again tomorrow and again the next week, we know that there will be a certain amount of fluctuation in his performance and in his score. And we have techniques that permit us to measure the likely amounts of such error.

Now, in order to discourage too literal acceptance of a score, the publishers of school and college ability tests have developed a device of the percentile band which consists of converting the score, not to a particular percentage range, but rather to a range knowledge of percentiles, hoping thereby to focus the attention of the teacher or the guidance counsellor on the fact that this test performance is not to be invested with this tremendous precision and exactness but is to be thought of rather as significantly, I think, a range knowledge or band of likely level.

Q. I see, thank you, doctor.

To come to a question that was suggested earlier by a remark from the Court, would you please describe what we mean by a so-called verbal test and non-verbal test.

A. The classification of tests into verbal and non-verbal tests applies particularly to the category of aptitude measures. It makes little sense, for example, to think of non-verbal reading tests or non-verbal history tests,



so we are talking mostly of the so-called aptitude tests.

Again I ask you to bear with me while I dip back into history a little bit, because it is important to set this in its proper perspective.

The use of intelligence tests had its greatest initial impetus in this country through their use as a device for the classification of inductees in World War I, and probably all of you have heard of the so-called "Army Alpha test" which was--I will mention this just coincidentally which was made up largely of material developed by Dr. Otis in his early work in intelligence testing similar to what appeared in early versions of the Otis test.

But this test was used with the great masses of inductees of World War I as a device for assigning them to appropriate roles in the army. And it was very quickly discovered that a considerable number of inductees, either because of educational deficits or because of foreign language backgrounds and so on, could not cope very well with the army "alpha" test, so the psychologists set about devising what was known as "Army Beta" a test that minimized the dependence on reading ability and ability to manipulate verbal symbols, and sought through this substitute for Army Alpha to achieve about the same purposes, and the literature of



intelligence measurement in the late second decade and early twenties includes many explorations of the use of intelligence tests with foreign groups, non-English-speaking groups, and we had this great concern with the effort to surmount the language handicap and to devise tests that would be free of dependence upon verbal content, verbal symbolism.

So, this tradition of non-verbal assessment of verbal intelligence, has a long history and as we have come up through the years, there has been a continuing concern with measures that would not penalize youngsters who, for whatever reason, were severely handicapped on verbal tests.

THE COURT: We will recess until 25 minutes to two.

(At 12:20 p.m. the trial was recessed until 1:35 p.m.)

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AFTERNOON SESSION

1:35 P.M.

MR. CASHMAN: Your Honor, during the recess I was informed by Mr. Kaufman that we would have a full complement of reporters for this afternoon and daily copy will be afforded us daily.

THE COURT: Very well.

MR. CASHMAN: Dr. Lennon.

## DIRECT EXAMINATION (resumed)

BY MR. CASHMAN:

Q Doctor, we had reached the point where you were distinguishing between the verbal and nonverbal tests. Could you kindly draw that distinction again?

A Mr. Cashman, I think perhaps I will skip some of the history that I was reciting and try to summarize this distinction, by remarking that we have sought to use non-verbal tests out of a realization that some examinees might be handicapped on verbal material, due to foreign language background or for other debilitating or incapacitating circumstances that would limit their verbal performance. Because it was considered desirable nevertheless to have some way of assessing potential, we sought to devise tests that would tap this potential, but not handicap the examinees because

of his verbal shortcoming.

I think two things should be said. Growing out of our experience with efforts to build these nonverbal tests.

In the first place, we have discovered that instead there are some children or adults, for that matter, who performed poorly on verbal tests, but who do relatively better on nonverbal tests. But that these cases tend to be relatively few in number and constitute exceptions to the general rule. Underlying many persons' belief in the utility of nonverbal tests seems to be a supposition that there is a kind of compensatory mechanism operating whereby persons who do poorly on verbal tests would tend to do well on nonverbal tests.

Q Is that a correct state --

A This is at variance with all of the evidence on the correlations between verbal and nonverbal tests. If one examines the data that are provided by several intelligence series which offer both a verbal and a nonverbal component, which would include, for example, the California Test of Mental Maturity, or the Lorge Thorndike Intelligence Tests, we discover that the reported figures on the correlation between the verbal and the nonverbal are of the order of .6,

which means that there is in general a tendency for persons who are above average on the one to be above average on the one or who are below average on the one, likewise to be below average on the other.

Now, let me repeat. The existence of cases where there seems to be somenotable deprivation on the verbal mode, with with notably better performance on nonverbal material, do exist. But these are exceptional and relatively infrequent.

Now, the other thing that becomes apparent as we deal with nonverbal tests is that regularly these tests are shown to be less good predictors of success in school learnings.

Q Is there any reason for that?

A We think it is perfectly understandable since school learnings themselves are so shot through with dependence upon verbal facility. The tasks of the school are overwhelmingly verbal tasks. For that reason one could say so are the demands of the society. To get along well on the job, to get along well as a citizen, places high demands on their verbal competence to read our income tax blanks, for example, to read traffic rules and so on, and so on. So that this verbal competence is an important competent of any tests that we do use to predict success, whether in school or subsequently.

Now, there is one further point that might be made. It is relevant to the usefulness of these tests as predictors, clearly the test-makers' goal in setting non-verbal measures is to duplicate in them those mental processes or intellectual abilities that are presumably collected in the verbal tests, but to do so through the use of some kind of symbolism or content other than verbal. But in making this kind of translation it sometimes happens that we really fail to tap quite the same abilities. We introduce other dimensions and so on, so that while we speak of a verbally-request or a non-verbally-request as if the only difference between them was the fact was that one was based on the verbal and the other on a nonverbal test, in truth the two tests may be tapping somewhat different dimensions of intellectual functioning.

Q I see.

Doctor, with respect to the tests that are given in the District of Columbia, Plaintiff's B-10 if I may have it, please.

Are there contained in that listing of tests, tests themselves that are nonverbal or tests that have a portion of their component as nonverbal?

A Metropolitan Readiness Test, is nonverbal in the

sense of requiring no recognition of printed words. The stimuli are presented orally for the most part. It is verbal in the sense, therefore, of requiring understanding of spoken injunctions. But there is no reading involved. Some of the subject-tests moreover place even minimal demands on understanding oral injunctions. There are such tests as copying figures or tracing letters or things of that kind.

Stanford is clearly a verbal test. Otis is a verbal test. Metropolitan is a verbal test. Test of general ability, I believe. I am not sure of the exact make-up of that test. I think there are parts which are nonverbal in character.

Sequential Tests of Educational Progress in school and college, and Metropolitan Tests are all verbal measures.

Differential Aptitude Tests include one component which is a nonverbal test. It is called, I believe, Spatial Reasoning or Spacial Ability.

Test of Education Ability, my recollections are entirely verbal, and I hesitate to speak with full assurance there.

Finally, Flannagan Aptitude Classification Test include several components that are nonverbal in character.

Q Doctor, in the testing of business and in your

testing experience, has there been any recent trend toward a greater and expanded use of nonverbal tests?

A None that I am aware of, Mr. Cashman. I speak with total assurance with respect to our own materials. We have offered nonverbal intelligence tests and do offer them now. They have not been a proportion at part of our activity. I speak only second-hand with respect to what is happening among the offerings of other publishers, and on the basis of conversations with school people, I do not judge that there has been any relative increase in the frequency with which non-verbal tests are given.

Q Do you attribute that to the relationship between school achievement and verbal facility and actual vocational achievement and the necessity for verbal facility, Dr.

Lennon?

A I am not sure I had ever stopped to wonder quite what the meaning of sales trends were. But that would seem sensible to me, Mr. Cashman, that it would place a great premium on verbal measures.

Q Now, in terms of your standardized tests, Doctor, would you indicate to the Court the process of standardization that goes into the make-up of these tests?

A The process of standardization, what is defined for this immediate purpose as the process by which we establish

norms for tests, now I make this distinction because standardization does in common usage connote certain other aspects of the tests that are endeavored. But I am sure what you have in mind is how do we develop norms for tests.

Again, I think the best way to present this is through a concrete illustration, and I will recount for you how we develop the norms for the most recent addition of standard achievement test. The goal in the development of a set of norms is to provide a set of statistics that describe how a representative cross-section of pupils in American schools perform on a test, grade by grade, age by age, whatever the ultimate grouping is to be. In ~~Stanford~~ it is a grade grouping, for instance.

Now, how can one with any confidence assert of a set of pupils or a school systems that it is representative? What do we mean by a representative sample? From the practical standpoint it is clearly impossible to have access to a genuinely random sample of pupils across the country. For one thing, the test-making agencies have to depend on the voluntary collaboration of school systems. For another thing you can't go into a school system and say, "We like to test four pupils in this classroom and three in this and seven in the next," and so on, because it disrupts the routine too greatly.



Therefore, the stress has to be placed on selecting a group of school systems in which all pupils will be tested, but which group of school systems can in some respects be defended as represented.

Now, representative in what characteristic? They should be characteristics that are important with respect to pupil achievement. We would even as laymen instinctively feel that it was inappropriate to develop a set of norms that was based entirely on rural school systems in Arkansas and Nevada, to make an extreme and absurd illustration for the sake of making the point.

We would feel also instinctively but nonetheless correctly from a scientific standpoint that to defend a set of school systems as representative they should be drawn from the various regions of the country, ideally indeed one would like to see representation from every state. We would say the communities that are represented should run the gamut of types of community, from the highest class suburb and communities, to the poorest type of either mountain community, let us say, or a run-down industrial community.

We would say that it would be desirable to have the complete spectrum not only of social economic status reflected. But insofar as we could easily do so, some natural index of

the community.

Now, specifically in the case of the tests that I am talking about here, we set up a statistical model of the kinds of school systems desired, the location of school systems, the national distribution with respect to social economic status as defined by immediate monthly income. Cultural level as reflected by average schooling of the adult populations of the communities, and size of school system.

Now, I will not go into the basis for choosing these particular dimensions for stratifying the sample, although I think the logic of them will probably appeal to most of you. But having identified the set of school systems, we then approve them to solicit participation. If a school system says, "No, we will not take part," we seek to replace it in our sample with another one matched to it on these characteristics, that I mentioned.

We insist that the school systems which take part test every regularly enrolled youngster in all the grades. We further insist that the school system test at least three consecutive grades so that we insure ourselves against any selectivity within the system.

One exception to this is in the case of very large school systems where if every pupil were tested the enterprise would simply become too expensive as well as somewhat

cumbersome. There we insist that the school system justify whatever sample that it selects for us.

Now, in the case of the Stanford, we tested approximately 800,000 pupils across the country. This I may say represents a larger number than we had ever previously included in a standardization program. It is a number I may say that is larger than needed to give us the kind of reliability in our sample figures that is necessary. But we have other goals to pursue in the standardization programs as well.

We are presently engaged in another standardization enterprise which I think is worthy of mention here, too. It relates to the development of what will be the new edition of the Otis series. We are in the process of developing completely a new edition of the Otis series. If I may be pardoned a commercial, it will be Lennon-Otis test for ability. Those are very weak of national standardization. We have followed essentially the same methodology that I outlined for the Stanford, but with additional refinement. We have sought to circumvent this problem of possible bias arising from a school system's willingness or lack of willingness to take part in the program. This may or may not be related to performance on a test. Nobody knows.

What we have done here is to create in advance three

matched panels of school systems, having the proper social-economic-cultural characteristics. Fortunately, on our first approach about 35 per cent of the schools systems agreed to take part in the program. So we have very little possible selection there. But we immediately went to the second equivocal panel for the replacement system.

Now, there are, as you would immediately perceive, many technical issues with respect to numbers of pupils that are required to attain various levels of significance with respect to the selection of a basis on which you seek representativeness and so on.

What I have described as our procedure is quite similar to the general methodology pursued by the other test-making houses in the building of their tests. The techniques for constructing norms like all the rest of the technology in the field are in a stage of evolution and improvement. We learn more as we go along. We certainly do a better job in norm tests now than we did twenty years ago.

Q Doctor Lennon, in terms of the elements of standardization that go into the description of the norms, do you include a racial factor?

A We have not included race, as such. We do have information with respect to ethnic representation in several

of our standardization programs, at least for those states where segregation used to prevail, and it is still possible to identify certain schools as preponderantly or totally white or Negro.

In the remainder of the country we rely upon the requirement that every pupil enrolled in the system be tested to insure that we have proper representation in a school system, proper in the sense that it is whatever the proportion of non-whites or other ethnic groups may be in the entire system. I will mention only one small caveat here. In certain parts of the country, certain large cities particularly, the situation is complicated by the attendance in the parochial schools of the area. Parochial school enrollment tends to have a different ethnic make-up than the public school enrollment. So there is a tiny possibility that we may, in certain wide systems, miss quite a control on ethnic representation. But we don't worry, because we believe that whatever significance ethnicicity may have in relation to test performance comes about because of its relation to such things as social economic status and cultural status, and that if you control social-economic status, cultural status, through either the indices that I have mentioned -- there are others that do the job equally well -- you take care of by all odds the biggest part of whatever impact ethnicicity as such might have. I

feel, and I think this is the common attitude on the part of test-makers, that for both scientific reasons and practical reasons, the practical reason being that by and large now it is impossible to get information for individual pupils concerning their race, that it should not be attended to explicitly in a standardization effort.

Q I see. Now, that does not mean, however, Doctor, does it, that when a school system is being used as a basis for the achievement of the norm that, say, the Negro school children in that system are excluded from your sampling?

A Most certainly not. Indeed, exactly the contrary. Our operation is color-blind. Every pupil who is there is to be included. This is a condition of participation in our programs. So that actually for Stanford, for Metropolitan Achievement Tests, for Metropolitan Readiness Tests, the ones that come to mind as our most recent ventures, the standardization group actually we know can demonstrate includes anywhere from, six to seven to nine per cent of non-whites.

Q Now, Dr. Lennon, what would your comment be on the accusation that the standardized tests, are standardized on a middle-class white population?

A From what I have said you will infer that I declare this simply not to be the case. On first-hand knowledge, with respect to those of our own tests that I have named, and on

the basis of a reading of the respective manuals for several of the tests published by organizations other than my own.

Q Do you make -- let me ask you this: Would you describe in a little bit of detail what attempts to make in achieving this standardization to give attention to and to determine the social-economic position of the children that are being tested?

A Yes. We rely upon Census data. We identify the Census area that is served by the school system, included in the standardization program. Sometimes the school district will be co-terminus with the Census unit. Other times it will not be. It may encompass several Census units, in the case of a city numerous Census tracts. In other cases it may include part of the unit reported in the Census and so on. These all call for certain modifications and adjustments. But fundamentally we locate for the area that is served by the school system Census information descriptive of median monthly income.

In certain tests we go beyond that to actual occupational distribution of the adults in the community which we match with the national pattern.

Now, we rely, as I say, on Census data preponderantly? Occasionally when we seek additional refinements we may go



to the reports of the chief state school officer where we will find such indicia as per pupil current expenditure, average teacher salary, class size, numerous other variables of this kind.

You must also realize that tests may be standardized in any year according to the publication programs of the various publishers. Whereas Census data are not available on an annual basis. There may therefore be a lag between the social economic information and the standardization program. This is unfortunate, but we tend to think it is an insignificant limitation.

Q Dr. Lennon, you also indicated in your explanation of how the tests are geared to declare a norm that you consulted the cultural level of the children who were being examined.

Would you indicate to the Court briefly, Dr. Lennon, what devices you use in order to achieve a cultural index?

A We have used one that is available which may be its largest merit. This is the average level of schooling of the adult population. Again, it is a piece of information that is reported in the Census compilation.

Now, I say we use that because it is available and handy. It happens that it correlates as well with scores on achievement tests and scores on intelligence tests as do several



other possible variables that might be chosen for that purpose.

Q Dr. Lennon, a frequent criticism is raised that standardized tests do not fairly evaluate the child that we have come to know as culturally disadvantaged. Will you indicate to The Court what your observations are with respect to the use of standardized tests in relation to such children?

A This is somewhat a complicated issue, Mr. Cashman, as you know.

MR. KUNSTLER: I don't want to interrupt. But if there is going to be a question based on cultural disadvantaged, we ought to have some definition of what that term means to the witness.

MR. CASHMAN: If I might say we will attempt to achieve one. However, as Your Honor knows, that term "culturally disadvantaged" means too many things to many people but has been freely used in this lawsuit by many witnesses without definition.

If the Doctor can attempt to give us one I would ask that he would.

BY MR. CASHMAN:

Q Doctor, just so that we can clarify the point, as much as is possible to define a child who is culturally disadvantaged, would you give us a descriptive definition of

what you understand a child who is culturally disadvantaged to be?

A     Maybe I will preface an effort to give you such a definition by saying that I do not believe it can be defined with such rigor as to make it possible in the case of every child to say "He is culturally disadvantaged, and he is not."

I think that we are talking about a condition which can be not of encompassing quite a wide range and series of gradations, say. One can only arbitrarily choose to point along there and say, "These are disadvantaged," and "These are not."

With that reservation, let me see if I can enumerate those elements that seem to me to go together into a characterization of a child as culturally disadvantaged.

/     Economic status is one. But by no means in my opinion identical with cultural disadvantage. I have known, and I am sure most of you have, children in homes that are economically at the bottom of the scale, whom I would not for a moment consider culturally disadvantaged because of great concern for things of the mind, if you will, prevailing in the home.

But nevertheless it is perfectly clear that this condition we think of as cultural disadvantage is to be found with far greater frequency in homes that are economically deprived and for perfectly obvious reasons. So when we say

financial hardship, financial stringency that has the result of depriving children of books and television or the opportunities to travel to museums, to do all of those things that enrich a life, yes. Economic hardship is one.

Secondly, a concern for, well a moment ago I called "things of the mind." A lack of interest or concern on the part of the parents for the growth, the intellectual growth of the child, a failure to motivate, to stimulate, a failure to try to inculcate this set of values that make some children aspire to intellectual accents. Where this is lacking we have another element in this cultural deprivation.

Where there is a lack of human warmth, a failure to provide for the child this kind of support that generates in him a feeling of his own worth. These are the things that to me, taken together, add up to cultural disadvantage or deprivation.

How frequent is it? Some experts put the figure at fifteen million youngsters. I don't know how one would demonstrate that this figure is nearly right, too much, or too little. I don't think it really makes much difference what number we can put on it. One puts only five million. It is still a tremendous problem.

Q Then in connection with the question that I posed to you, conceding that to be a descriptive definition of culturally disadvantaged with your reservation as you

have announced it, Dr. Lennon, it has been said that the standardized tests is an unfair evaluation of such children when given to them.

Do you have a comment on that criticism?

A I think that one should look first to the kind of data that give rise or support this feeling of possible cultural bias. From the earliest days of intelligence testing, psychologists have observed that if you arrange examinees in order according to the level of their parental or parents' occupation, you start with professional people and work down to managers and down to laborers or unemployed people, for example, that the average scores on the intelligence tests will move along in very close agreement with social economic status.

As far as I know this finding occurs with tremendous regularity. I don't think there is any psychologist disposed to question this fact.

Now, what do we make of that? Do we say "Well, that is the way people are." The bright people tend to get ahead, and that is the way it is going to come out.

Q Or do we say these tests have something in them that is operating to the disadvantage of the youngsters coming from the lower classes, and how can we tell?

Well, the obvious thing is to look at the content. And

one of the most notable explorations in this field was a series of studies by Dr. Allison Davis and Dr. Pelse eighteen years ago in which they concerned themselves with the problem of whether or not the tests were operating unfairly because of something inherent to the testing themselves.

They propounded the thesis that indeed the content of these tests had some loading in it that operated to the disadvantage of the underprivileged youngsters.

Now, it is pertinent to report that this point of view is certainly by my reading of our literature most. This remains a debatable issue to this day.

Now, you asked for my personal opinion about it. My personal opinion is that one in building an intelligence test defines the kinds of tests that he thinks makes up this domain of intellectual activity, that he seeks to incorporate tasks that children by and large will have had an opportunity to become familiar with. He succeeds well, sometimes not, in doing this.

So I am saying that on a theoretical level I can conceive that the content of some of our tests may be content that some youngsters have had greater opportunity to learn than others.

Now, does this make the test unfair? My answer to that is that this is a meaningless question until one asks "What are you using the tests for?"

"What kind of inferences do you draw from the child's test performance?"

Now, from the beginning of intelligence measurement, psychologists have known and declared ad nauseum that in interpreting the results you had to take into account a greater variety of other information than for the normal interpretation there was an assuming of certain criminality of background and motivation and so on. If this is lacking, then the interpretation should be made with more constraint.

But the point that I insist on is that we are not here concerned with a defect in the test, per se, but rather with the interpretation.

Maybe if I cite an analogy here it would make my point a little clearer. Let's suppose that we have a child who has been disadvantaged in a very real, physical sense. He has been undernourished. He has been the victim of parental neglect or no parents whatever, he has grown up in an institution and has been systematically and over a protracted period undernourished. We put him on a scale, and the scale tells us that he is notably underweight, away below the weight norms for his age.

Now, is the scale unfair? My interpretation is the scale is telling you a very real piece of information, accurate and dependable, about this child, and that giving

you that information it gives you guidance in what to do for his improvement and betterment.

But to say that because the scale showed he was under the norms it is therefore doing him an injustice, I think this is missing the point. That is why I say, we asked what I have in mind, what interpretations or judgments are made, I would be very frank to say that there are cases where erroneous judgments have been made about children. But I would also point out on the basis of these test score. But I would also point out that a lot of other information about children is misinterpreted too.

Q Dr. Lennon, then, does the standardized test as it is applied to the culturally disadvantaged child serve any purpose with respect to say discovery of talent?

A Mr. Cashman, let me take advantage of that question to add one further point to the preceding question as to one very naturally. One must also ask in this matter of possible cultural bias, pursuing my theme of "What is the purpose," what are we trying to learn from this test? If indeed a youngster has experienced a cultural deficit, for whatever reasons, and presumably is suffering a handicap because of that, precisely that fact will serve to make his path harder in pursuing the work of the school, finding a job, doing all of these other things that we think is good and desirable and



healthy for a person to do.

Therefore, if it were possible to design a test which failed to reveal that the person was laboring under this deficit, which showed him to be as richly endowed and equipped as the more favorably circumstanced person. By that very fact the test would be an inaccurate and less useful instrument. So I think we must keep in mind what it is that we want this test to tell us about the child.

In many cases it is precisely this measure of deficit that is most important in classifying.

Now, to come to the movement or the identification of talent. I would say it is one of the notable things about the test that they unearth talents which might and frequently is overlooked in the absence of the tests.

Now, why does this come about? This comes about because when there is no test information the process of making judgments and evaluations about children continues to go on. Somebody is looking at this child and making explicitly or implicitly certain predictions about how he or she is going to get along.

Now, what are they using to make those judgments when there is no test data, or even when there is test data? They are using observation, which frequently might be an observation of a child coming in with ragged clothes, with a



surly attitude with other evidences that a teacher may attach a lot of weight to the disadvantage of a child. But the tests give us a way of seeing them without the teacher's own built-in perspectives of whether you are doing good or ill.

So we have another shaft sunk into this mine, if you want that analogy. So let's take another reading of this youngster. Every way that we can take a finding I think is to the advantage of the child.

Yes, we do find talent in the school systems. The school system can recite for you case after case of youngsters who have surpassed in past performance what teachers would have expected.

Q Dr. Lannon, does the standardized test in the situation of the context that we are talking about serve any purpose with respect to divining the particular learning difficulty that a child may be experiencing?

A For the specification of learning difficulty we will ordinarily move into the arena of tests that we talked about this morning of diagnostic tests, where we wish to probe deeply and intensely into the special learning difficulties in reading or in trying to do what-have-you.

The diagnostic test is the more useful instrument. The measure of general learning ability collected in the scholastic aptitude tests clearly is relevant. But since it is by its

nature general it is more difficult to pinpoint special learning traits, than either the achievement or diagnostic tests.

Q Dr. Lennon, is there any useful purpose served by the standardized test with respect to the disadvantaged child in terms of placement in the category we will call pupil ability grouping? Does it serve any good in that context or any purpose?

A I would go further than saying "does it serve a purpose." My own view is it is indispensable for optimum, most accurate placement. By that I don't mean that one should place taker reliance on a test score or a set of contests for this endeavor. For if one turns his back on the information that is available through the proper use of tests it can only operate to the detriment and to the poorer placement classification and instruction treatment of the child.

Q Dr. Lennon, you made earlier reference to the high degree of correlation between children achieving on tests and the background of socio-economic backgrounds from which they come. I believe you indicated that children from professional families tend to do better than semi-professional families and all the rest.

Now, within the relationship between average scores on say, intelligence tests, do you find an overlap as between children from lower socio-economic status compared to the child with the more moderate or higher socio-economic status?

A Decidedly so. I think this is a very good point to be reminded on. While there are these differences in the average scores, members of various socio-economic levels, it is equally true that some youngsters from the best socio-economic background do very poorly on these tests.

And some youngsters from severely deprived backgrounds do pretty well on the tests. I think this is an extraordinarily encouraging idea of the whole thing. Talent is available in all quarters, on all levels.

Q Dr. Lannon, mention has been made of a culture-free test. Is there such a thing as a culture-free test as we know tests today?

A There is not, Mr. Cashman, some tests have been published that include in their titles the label "culture-free." Then there are others who say "culture fair." But I do not make it my intention to give it to the people who are a culture-free test. It is almost contradictory in terms. We cannot build a test that is utterly divorced from culture. And even if we could it would be hard to see what utility it would have.

example, would fluctuate from 65 to 62. I apologise for citing figures that are relatively meaningless in this context "for the prediction of Metropolitan reading" the figures are 67, 64 and 64. The point here as this test goes, it works as well for one social-economic group children as with another.

THE COURT: I think we ought to give the reporter a rest.

(Short recess.)

BY MR. CARRAN:

Q Dr. Lennon, in terms of the administration of standardized tests, what role does the training of the teacher in connection with that administration play?

A We view this as very important. Proper administration of the tests. But even more in their proper interpretation and use. The administration of most tests is not a particularly demanding or difficult endeavor. But their proper interpretation does presuppose the mastery of certain concepts, certain understandings by teachers that cannot be taken for granted.

If you would go through the manuals of most of our tests you would see repeatedly the caution that a certain amount of training of the teachers is highly desirable, almost

indispensable. You would see recommendations repeatedly that the test information integrated and coordinated with all the other sources of information that a teacher has about a child. We view this as so important that we carry out as do most test publishers various efforts to provide in-service training to teachers and provide aids to their better understanding in the use of the tests. The answer is we view this as most important.

Q Now does this go to an interpretation on the test result, the score? Or is it refined to a further degree and concern itself with say, for example, sub-test scoring?

A I am not sure, Mr. Cashman, that I know just what you are intending by the reference to sub-testing. If we talk of Stanford Achievement Tests we sometimes speak of the reading test, the spelling test, the arithmetic tests as sub-tests. Is that what you had in mind?

Q What I had more in mind was your testimony that in connection with informing the teacher about the importance and the method of interpreting test scores, and its appears in, say, the Manuals of Directions that accompany the tests. I was inquiring whether or not the Manuals spoke to say, for example, with the Metropolitan reading test an interpretation and advice to the teacher on that score regarding sub-test scores?

A In the case of the Metropolitan Readiness Tests, the treatment of the sub-tests consist of a description of what each sub-test undertakes to measure, why it is considered important in that test. But it does not extend to recommendations concerning the separate interpretation of the sub-tests. We in fact discourage the teacher from trying to make separate interpretations of the sub-tests.

Q Doctor, what do you understand to mean by the term "testing anxiety"?

A I suppose I would understand anxiety to mean a condition of anxiety, uneasiness, worry, maybe tension, stimulated by the test-taking experience or the prospect of it. Whether this stems from an anticipation of poor performance or just the general anxiety that afflicts many of us in any kind of demanding situation, I cannot say.

Q How widespread a phenomenon is it in your knowledge?

A Well, I suppose that most persons, if asked whether they relished the test-taking experience would say, "no," and would admit to some feelings of uneasiness at the prospect of taking the test. I think what you are really asking me, Mr. Cashman, though, is not how pervasive I suspect this may be but rather how important I think it may be in its influence on the test performance.

Q I would be pleased to know that.

A If that is your assumption or your intent, then I would give it as my opinion that it is not an imaginary source

of test variance for the great majority of test-takers.

Q Are you aware of any evidence that would say that the phenomenon of test anxiety would be any more prevalent among say the culturally disadvantaged than it would be among any other group of children?

A There have been one or two studies, Mr. Cashman, that seemed to point to a higher incidence of test anxiety among disadvantaged groups. I have not been particularly concerned with any hard study in this area, so I do not represent any special expertness. I have a general feeling that these researches are at least open to the other interpretations.

Q Doctor, your testimony then concerns itself with the relative importance of such an experience?

A That is correct. If I may just add a word to that, Mr. Cashman, anxiety I think may be thought of as one of several things that can influence test performance, speed of performance, for example, attitude toward test-taking. I think it is necessary to ask always whether it is a good thing or a bad thing in a given context to have these influences that work on the test score. The approach to that would be again "What do you look to this test score to predict or tell you?" It can be, you know, that in the case of speed or anxiety, if these are important in the test-taking situation,



they may also be important in whatever criteria behavior you seek to predict. So that it is not all a bad thing that they be in the test score.

MR. CASHMAN: May the Clerk mark these four documents? That is for identification.

THE CLERK: Defendant's Exhibit No. 61.

(The document referred to was marked  
Defendant's Exhibit No. 61 for  
identification.)

THE CLERK: Defendant's Exhibit No. 62.

(The document referred to was marked  
Defendant's Exhibit No. 62 for  
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identification.)

THE CLERK: Defendant's Exhibit No. 64.

(The document referred to was marked  
Defendant's Exhibit No. 64 for  
identification.)

THE CLERK: Defendant's Exhibit No. 65 marked for  
identification.



Q Thank you, Dr. Lennon.

With the exception of the Manual, Dr. Lennon, are these group tests?

A These are all group tests, yes, sir.

Q And that includes the other number of exhibits that you have previously identified in the early 60 series?

A That is correct.

Q Dr. Lennon, may I have your professional opinion about what would happen to a school system if the testing experience was eliminated from the operation of that system? And by the testing experience I am limiting my question to the standardized tests and all the tests that we have discussed here today, making special reference, of course, to Exhibit B-10 which includes a recitation of the tests that are given in the District of Columbia?

A Mr. Cashman, that is calling for a little prophecy, I think. Rather I hope it is not calling for a prophecy so much as an anticipation.

I am sure that from what I have testified already today you are persuaded of my very deep conviction that in standardized tests the school system, including the classroom teacher, the guidance counselor, the supervisors and administrators of a source of information about the pupils, about their talents, their accomplishments, their progress, of information about

the effectiveness of the educational programs that is attainable in no other fashion than through the use of these tests. The tests provide an independent set of yardsticks that complement the judgment that the teachers may make or the school administrative staff may make. They permit a school administration to answer the reasonable inquiries of its constituents as to how well it is doing the job. I know of no way a school system can assess or evaluate its performance in relation to that of performance of other school systems than through the use of some kind of standardized measure of outcomes.

It is no problem for any test-maker to recognize that tests at best are imperfect instruments. I don't think any of us would try to make a case for tests on the basis that they provided unerring information about children. But I think any of us who is serious about measurements plays in the school would say but that a sensible standardized system of testing provides very relevant, useful information about children in the absence of which the school is very likely to do a considerably less good job in the assignment of pupils and in adapting instructions to them, discovering their talents, evaluating their progress, and all those other things we have talked about.

Now, it is perfectly true that one can look at other

educational systems around the world and see systems where they seem to get along without standardized tests, or certainly without as much use of them as is characteristic of the American schools. I take this to be in a way a kind of tribute to the American school system, that it has sought through this instrumentality the mechanics of dealing with that great problem of mass education that we have tried to invent and operate a system for ascertaining pupil abilities and so on that will let us in the midst of this enormous mass educational effort still pay attention to individual requirements.

The very impressive thing to me, and I realize that I am a partisan in this whole thing, but the growth of testing has come about through no pressure from any governmental agency. The growth of testing is attributable to knowing more than the voluntary wish on the part of school systems to do more testing, with the exception of a few states such as I mentioned earlier, where the use of certain tests is mandated and the impact of which would be minor in the whole testing picture, standardized tests have grown in use, penetrated to every quarter of the educational scene because school people want it to.

I am almost ashamed to say it but actually the test industry's promotional efforts are pitiful, really, and

the acceptance of the tests has come about almost in spite of the dearth of promotional endeavor.

Now, that is very closely related to my answer to your question. I cannot believe that this acceptance of standardized testing in the schools reflects anything other than a conviction on the part of school people that they can do the job better, and this conviction I share totally and fully. I believe that the task of the school is to help every youngster develop to the full along the lines that are beneficial to him and to society, and that this is somewhat more likely to happen when there is a standardized testing program in operation in the school.

Q Dr. Lennon, in connection with your answer, you indicated that you were a partisan in this particular area, and I would like you to tell me from whence that partisanship springs?

A I guess that if one were to spend a lifetime working at something, and believed at the end of it, I certainly have not come to the end of my lifetime with this, but to believe ultimately that this was not a very useful or sensible endeavor, one would run certain mental health risks. So maybe I will say I cannot tolerate the thought that this is no good after devoting a lifetime to it. I don't think that is really the motivation.

I think my feelings of confidence in this kind of enterprise may be of two sources. I spend a good deal of my time talking to school people out in the schools, discussing with them their problems of evaluation and pupil classification and placement and so on, and I come away from these discussions with my confidence in the effectiveness of these instruments continually. Then maybe a more personal front, I am a parent, I see my youngsters moving along, and I want for them that educational endeavor to be as sensible and appropriate and well directed and tailored to their needs as it can practically be made. I just believe on the experience they have gone through so far that their careers have been helped through the availability from time to time of test information. I don't know, but I feel very secure that the benefits are there.

MR. CASHMAN: I have no further questions, Your Honor.

THE COURT: Are you ready to proceed with the cross-examination?

MR. KUNTSLER: I could proceed with part of it. But the remainder of it will be tomorrow.

MR. CASHMAN: May I ask the counselor at this time what your contemplated cross-examination entails in time?

MR. KUNTSLER: Five hours.

THE COURT: You think you would finish with this witness tomorrow?

standardized them out or average or any word you wish to use, in order to reach a standardized norm, national norm?

A Let us assume that we have taking part in a standardization program school systems A, C, C, D, E and so on. Let us assume further that we have administered tests to be standardized in these school systems in whatever grades may be appropriate.

We put together a summary of the results of the pupils in grade 5 in school system A. We do this for school system B, C, D and so on.

Physically, what we are talking about is a computer operation. Conceptually, what it amounts to is placing these distributions side by side and summing across to produce a combined distribution of scores for the pupils in grade 5, in grade 7, or whatever is appropriate, with the application of such weightings to the distributions as may be indicated for purposes of controlling regional representation and the other matters that I mentioned this morning.

Is that clear?

Q That is clear.

THE COURT: Wait just a moment. It is not clear to me. When you get local results, do you make a standard

norm out of the local results and then use that standard norm with all the other standard norms from all the other participating systems, or do you attempt to make a national norm out of the individual papers from all of the systems?

THE WITNESS: In general, we pay little systematic attention to the distribution of a particular participating school system. We move immediately in the data processing operation to the aggregation of the results from all the participating systems, so that if, let us say, we have a school system with four elementary schools in it, and each of which there may be two or three classes, you would begin with the results for Miss Jones' class, then you have the results from Miss Smith's class, then you move to the next school and you have two or other classes, and so on, until you have that whole system.

We do not pay attention to these unit groupings, as an ordinary practice we move right to the compilation of the total distribution across all the participating systems, so that we treat the whole standardization population as if it were one great big system made up of a lot of districts in schools and buildings and classes.

BY MR. KUNSTLER:

Q If I can just follow that on one step further,



take this test?

A For that test, that is correct.

I may just interject in passing that if we had a situation such as you described where one-hundred of a thousand subjects made the maximum possible score, and a hundred made the poorest possible score, we would start over again, because this would be a very poor test for a number of reasons.

Q Even I realize it is unrealistic.

A Yes.

Q I was just using it for evenly and easily discernable numbers.

A Yes.

Q That norm figure you have then, and we are talking about an achievement test, because that Stanford test is an achievement test, children across the country in every school system across the country, whether or not they had been in the community you selected, and assuming that school system utilized that norm as the determinative factor, would be gaging pupils against that norm; is that correct?

A The term gaging -- the reason I am hesitating, Mr. Kunstler, is the term gaging has certain value implications,



I think, that may not always be present in the use of the norm.

We would prefer to couch it that this national norm becomes a point of reference against which to compare a locally obtained median.

And the reason I make the distinction is that the achievement test makers generally are very careful to point out that a norm arrived at as you have just outlined, is nothing but a descriptive statistic. It carries no connotations of desirability, it is not to be regarded as a standard.

Hence, to say that a school should be gaged against it goes a little further than the test maker is willing to say, because we advise the user, Now you should evaluate your performance in the light of many other elements in the local situation. Maybe there are good reasons why this community will not achieve at a level commensurate with a national norm.

So it is more a benchmark, let us say, than a goal to be aspired to.

Q While we are on the subject of the school system, there are two main purposes I understand for the achievement test. One would be to test how the school

supplementary publications suggestions of proper ways of interpreting the test scores, suggestions for their use, and cautionary observations concerning limitations on the interpretations.

Q Now whether we talk about achievement or aptitude tests, and we can break them down later, as I understood your direct testimony, both of these sets of tests require for standardization the selection of a pupil community; is that correct?

A Of a sample of subject; yes, sir.

Q Now in selecting the pupil community, would you indicate for the record exactly how this is done by you with relation to Harcourt Brace tests?

A Yes, sir.

Again, my testimony will be clearest if I describe it in terms of a concrete undertaking, and since it is the one most recently done, thus it is freshest in my mind. Also, it is because it is exemplary in some respects, I will describe what we have gone through in defining the normative sample for the revision of the oldest test that I mentioned earlier.

Our first step was to prepare essentially an Atlas of all the school systems in the United States.

From this Atlas we selected at random one-sixth of the school systems, the reason for one-sixth being fundamentally rooted in considerations of reliability and efficiency.

For the systems in this one-sixth we then prepared a system description that incorporated information on the size of pupil population, and on the community including the socio-economic information and the educational level information that I mentioned in our earlier testimony.

We established again what we call a sampling matrix which is simply a portrayal of the ideal representation by region, by size of community, by type of school system, by social and educational level, and determined the numbers of subjects to be included in each of the cells created by taking into account these several dimensions.

We then divided our school systems into three equivalent panels, so to speak, each of which taken as a whole constituted a replication of this sample whose model we had created.

We approached these school systems and solicited their participation in the standardization program, and as I testified earlier, were very gratified to have some 90 to

95 percent of the systems agree to take part in the program. Where we had a turn-down, we replaced the system with a matched system.

Now, we will test in these systems every regularly enrolled pupil, again with the exception of those systems in cities of 300,000 or more population where considerations of practicality necessitate our dealing with smaller samples.

The representation of non-public schools has been approached in the same fashion. We begin with an enumeration of the two major non-public school systems, the Catholic and the Lutheran, which are the most populace of the non-public school systems, and have sampled within those systems along substantially the same lines.

So, we believe that when the testing of this sample of pupils is completed we will have scores that describe as nearly as we believe to be practical in time and space, the performance of American youngsters of specified age or grade on these tests.

Q This was the 800,000 pupils?

A What I have described, Mr. Kunstler, is the enterprise now underway, not the 800,000 enterprise that you and I talked about in my deposition the other day.

One, that a standardized test, achievement or aptitude, was valid for any pupil population?

MR. CASHMAN: Your Honor, we are just doing something by another name.

If counsel wants to put a direct question to the witness, that is perfectly valid and proper, but to list a series of conclusions and equate that with his testimony yesterday, I think does a disservice to the doctor's answering of individual questions.

I don't think it's proper. He may answer questions.

MR. KUNSTLER: I will ask --

THE COURT: Just ask him individual questions. You can use the same language you are doing, but just leave out reference to yesterday's--

MR. KUNSTLER: All right, Your Honor.

BY MR. KUNSTLER:

Q Doctor Lennon, is it your testimony that a standardized achievement or aptitude test is valid for any pupil population?

A No, sir, it is not.

Q Now, if it is not valid for any pupil population, would you indicate why not?

A The answer to that question, Mr. Kunstler, has to

begin with the concept of validity of a test.

In the technical standards for tests, the American Psychological Association distinguishes among several types of validity.

Particularly, it refers to content validity, to predictive validity, and to construct validity.

Now, without going into an elaboration of these specific types of validity, I will respond to your question by saying that according to the type of test and the purpose of the test, one would make a judgment as to whether it was valid or of the degree to which it was valid with respect to whichever of these three types of validity was appropriate, and that that judgment would necessarily involve a consideration of the type of population to whom the test was being administered.

Now, I would say without hesitation that a test in the English language, to use an absurd illustration to make a point, would be inappropriate for a population that was not English-speaking.

A test, to come down to a more specific and reasonable illustration, a test of arithmetic that was predicated on the arithmetic courses of study in vogue ten years ago would be in parpam inappropriate, that is to say, invalid test for many

school systems that have adopted one of the so-called modern mathematics programs.

By the same token a physics test developed ten years ago would be an invalid test for most high school physics courses today.

Now, these have to do with considerations of content as they affect validity; considerations of appropriateness of norms also have a bearing upon the appropriateness of a test for a particular purpose.

So in short the answer to your question, I would think, Mr. Kunstler, would be that one must take into account these specific purposes, the specific applications in judging as to the validity of a test in a given situation.

Q Well, let's keep it then to what I believe you discussed yesterday, the predictive quality of an aptitude test.

A Yes, sir.

Q Are you prepared to say that an aptitude test, which is standardized on the norm which you testified to yesterday, this cross -- what you called a representative cross-section sampling of the pupil population of the United States -- are you prepared to say that such a norm or such a test grounded on such a norm would be valid to predict the achievement level of a population, a pupil population, totally dissimilar to the

standardized group?

A There are two issues here, Mr. Kunstler, that must be looked at separately.

In the first place, there is the issue of norms and a population that is markedly different from the norming group, either in the sense of extremely superior to it, or extremely inferior to it, may be a population for which the test would be inappropriate, not because of its predictive characteristics, but because of difficulty characteristics.

Now, apart from this, we must look at the issue of predictive validity in its own right.

I think in yesterday's testimony I cited as an illustration of predictive validity the college entrance examinations.

Now, it is entirely conceivable that we would have a population quite similar to the norming population and yet a population for which, in a given college context, the college boards would be inappropriate because the criterion, that is to say, the scores that we are attempting to predict of the kinds of success we are attempting to predict would have elements in it that are not reached by the particular predictor.

Therefore, to give a generalization in response to your question, as far as predictive validity is concerned, this



must be judged ultimately on the basis of empirical evidence in a given situation.

The impact of closeness of similarity of the group in question to the norming group or deviation of the prospective population from the norming group is related, but related only through considerations of appropriateness of difficulty.

So in other words, what I am saying is we are talking here of two rather different concepts: the question of appropriateness in the predictive validity sense ultimately needs to be studied empirically in any given context.

Q Doctor Lennon, it was my understanding from yesterday's testimony that you made a generalization that as far as predictability was concerned, a standardized aptitude test was valid for any pupil population across the nation.

Now, I didn't understand your last answer as getting to that point.

Are you prepared -- or did I misunderstand your generalization yesterday on that score -- or are you prepared to make the same generalization in response to my question two questions back?

A I do not recall, Mr. Kunstler, that yesterday's testimony of mine did indeed include such a generalization, that the predictive validity of a test could be assumed

nationwide.

Q Then, are you prepared to say, Doctor, that it can not be assumed nationwide?

A I would put it this way, that the professional practice of choice would be that the validity in a predictive sense of any test used for a predictive purpose ought to be investigated in whatever situation the test was being used in.

Now, in practice this happens infrequently with respect to scholastic aptitude tests.

The reason that it happens infrequently is that there have been repeated investigations in a great variety of school settings of the extent to which the typical type of scholastic aptitude tests, intelligence test, does indeed correlate with measures of pupil success and on the basis of these repeated investigations people conclude that this predictive validity has been sufficiently well established so they proceed comfortably, but ideally, it is a feature of the test that ought to be explored and empirically established.

Q Now, do you know Mrs. Katrina de Hirsch?

A I do not, sir.

Q Do you know the Pediatric Language Disorder Clinic at Columbia Presbyterian Medical Center?

A I do not, sir.

this for rebuttal then.

BY MR. KUNSTLER:

Q Is it your testimony then, Doctor Lennon, that the literature in the field of testing indicates that there is a definite correlation between scores on aptitude or intelligence tests and achievement tests?

A Yes, sir.

Q And is it your testimony that that literature comes to the general conclusion that if you do well on an intelligence test you will always do well on an achievement test?

A No, sir. And the key word is always.

Q I see.

Would you indicate to the Court what percentage of correlation the literature indicates there is between the two --

A Well --

Q And I would like to know what literature you are referring to.

A All right.

The literature, Mr. Kunstler, is hard to describe quickly. It is spread through some 15 or 20 journals over a period of 40 years.

There are summaries with respect to individual tests published in the manuals of those tests, on supplementary

information.

The list of relevant journals I will be glad to provide for you, if you want it.

The typical range of relationships reported between measures of scholastic aptitude and success in various areas of the curriculum would be represented in statistical terms, the only terms that I think are appropriate here, as falling within the range of correlations between .40 and .65.

Now these vary with grade, tending to become higher the higher up one goes in the grade scale.

They vary from subject to subject, tending to be at a maximum in those subjects that are most heavily saturated with verbal components.

The -- well, I will pause there.

Q Just to clear up and make the record quite clear as to what you mean by the figures you are using, .40 etc., as I understand it, 1.00 would be perfect correlation.

A Correct.

Q And that would mean, would it not, that a student who -- or the unit of increment of a student on an aptitude test would be exactly the same as the unit of increment in an achievement test?

Is that correct?

A No, that is not correct, Mr. Kunstler.

The significance of a perfect correlation, 1.0, is that the individuals would be ranked identically in the two series.

The individual who is number one with respect to the aptitude measure would be number one with respect to the achievement measure; two and two, four and four, etc.

In other words, the correlation measures the degree of similarity in rank status between members of the two series.

Q If you had a 1.0, you would have correlation. You would have perfect predictability, would you not?

A That is correct, sir.

Q It is also my understanding from the literature that that almost never occurs.

A I think we could even forget "almost."

Q All right.

That that never occurs.

A Never happens."

Q And that, therefore, we never reach on the correlative scale any perfect predictability?

A Precisely.

And I may say it would be a little disconcerting if we did. All that would tell us is that one or the other

information.

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That that never occurs.

A Never happens."

Q And that, therefore, we never reach on the correlative scale any perfect predictability?

A Precisely.

And I may say it would be a little disconcerting if we did. All that would tell us is that one or the other

series of measures was superfluous.

If it were possible to predict perfectly how students would do, that would be a very discouraging state of affairs, I should say.

Q Well, it would eliminate one set of tests, would it not?

A We would have to go through the experiences -- I am being a little facetious now.

Q But it would eliminate one --

A It would eliminate one set of tests, certainly.

THE COURT: Am I understanding you that the variance is between 40 and 65 percent?

THE WITNESS: It is a little misleading, Your Honor, to translate directly to percentage terms.

This measure of relationship that is known as a correlation coefficient assumes values that may range from minus one point zero to plus one point zero.

The plus one we have just described.

If we had a situation in which the person who was highest in one measure was lowest in the other and that prevailed uniformly, we would have a relationship described by an index of minus one.

If there is no tendency whatever for the two series



of measures to be associated, the correlation takes a value of zero.

Now, it is not possible really to say that .40 represents 40 percent of perfect correlation as the computational schemes do not lend themselves to this sort of interpretation.

Another way of looking at the meaning of these relationships is in terms of what proportion of whatever is measured by one test is also being measured by the other.

Now, there are ways here of expressing a correlation coefficient in terms of common elements.

In that mold of analysis, a correlation of .6 or .60 would indicate that about 35 or 36 percent of what factors contribute to variance in one test are also operative in producing the variance in the other test.

So that there is with a correlation of .6 still considerable independence between the two sets of measures.

Q Doctor Lennon, are you familiar with Philip Himmelstein?

A No, sir.

Q His name mean anything to you?

Are you familiar with the Psychological Bulletin of the American Psychological Association?

A Yes, sir. I have contributed to it.

example situations with reference to this correlation.

I am talking about a paucity of similar tests to what I have described.

Is that true?

A I would have to distinguish --

MR. CASHMAN: Your Honor, before the witness is required to answer the question, if the witness is going to be examined with respect to the observations of another man, either an expert or experienced in the field, I think whatever that expert or other gentleman experienced in the field concludes ought to be presented to the witness in his own language and not be distilled and be presented to this witness in the language used by counsel.

Your Honor, we are in a very esoteric and rather precise field, and I think it would serve the purposes of accuracy and this record if this witness were given the benefit of the exact words supposedly made by the gentleman, Mr. Kennedy.

MR. KUNSTLER: I will quote them, Your Honor. I have no objection.

THE COURT: All right.

BY MR. KUNSTLER:

Q Quote -- there is a paucity of studies relating

Stanford-Binet: -- given here -- he uses S-B, rather than Stanford-Binet -- scores to scholastic achievement -- end quote.

That is attributed to Doctor Kennedy.

A. I would agree with that statement.

I think the inference or implication that possibly you are tending toward, Mr. Kunstler, that this paucity pertains to evidence on the relationships between group tests of capacity or aptitude and achievement should be clearly designated as inappropriate.

The literature is replete with data on correlations between scores on group capacity tests and measures of achievement and when I say replete, I am referring to literally thousands of such correlations at all grades with respect to all branches of the curriculum.

Now, the reason for the paucity of data with respect to Stanford-Binet is very clear.

Stanford-Binet is a test that must be administered individually. It requires on the average 45 minutes to an hour for its administration, some additional time for its scoring and interpretation.

Therefore, it is simply not possible for most school systems to administer Stanford-Binets on a very broad basis

and to accumulate the numbers of cases for which there are Standard-Binet results and achievement test results needed to permit reliably established correlations.

Q Do you know how the Stanford-Binet is standardized?

A I was familiar with the standardization of the original Stanford-Binet and of the 1937 edition.

I have not familiarized myself thoroughly with the most recent revision which was, I believe, the mid-1950's revision, but I -- well I will stop there.

Q Now, you realize -- let me withdraw that for a moment.

Are you familiar with the literature which relates to the correlation of aptitude and achievement when you are dealing primarily with Negro testees?

A I don't know quite how one would define familiar here. I think that I have either read or seen the references to most of such studies, Mr. Kunstler.

Q And from your reading of these studies, would you say that the same correlation exists between aptitude and achievement as exists with, say, predominantly white groups of testees?

A I would say that this seems to be the general import of the studies.

Now I think when we speak, as we have in this context, of middle-class, we have not been using the term with this degree of precision.

I think we have taken a kind of man-in-the-street concept of middle-class, referring to that bulk of the families which are not egregiously disadvantaged and that group at the other end that are not notably abundantly endowed.

MR. CASHMAN: Now, Your Honor, for the purposes of clarification of the record, the first use of the terminology middle-class white population emanated from the mouth of Doctor Klein in connection with the standardization process as he characterized the way it was done.

The question -- it is directed to counsel on direct examination -- was to establish the accuracy of that statement and the middle-class definition, whatever it meant to Doctor Klein, did not become apparent as counsel is presently trying to elicit from this witness.

I just wanted to indicate to the Court the genesis of the use of the terminology.

BY MR. KUNSTLER:

Q When you answered Mr. Cashman's question yesterday about where the word middle-class occurred, what did you have in mind as encompassed within that term?

A I would say, Mr. Kunstler, that what I had in mind was the type of man-in-the-street's notion that I have just described for you.

Q Fine.

A Because this concern with middle-class representation is an issue that has been bruited about in the test profession now for several years and I would say that any of us who have been concerned with it react to this kind of a concept almost without thought and without striving to attach a precise definition to it.

Q Well, now, taking your definition, this man-in-the-street definition which we have discussed, can you indicate to the Court what percentage of the children who were part of the test population which you have described in your testimony yesterday would come from families which would fall within your definition of middle-class?

A I would just be guessing, Mr. Kunstler, without having recourse to our distributions of income and without recourse to distributions of occupational status.

I don't hesitate to offer my guesses, if they would be useful for you.

I would put that group that we would regard as substantially middle-class at about 60 percent of the total.

Now, you realize the degree of arbitrariness there is in categorization of this kind.

Q So assuming that it is 60 percent, or let me ask you whether you would consider the percentage, 60 percent, to be -- withdraw that.

I would assume then that the 40 percent would include what we would call the lower socio-economic group or -- and the higher socio-economic group.

A Yes, sir.

Q What percentage would you guess would exist in the latter group, the higher socio-economic group?

A That I find very difficult to do, Mr. Kunstler.

Again, I think the more finely that one tries to divide up this whole continuum, the less confidence one has in the establishment of allocations to any one segment of it.

Q Well, would you --

A So, --

Q Go ahead. I am sorry.

A Well, I really feel incompetent to try to make that classification now without going back to the precise income and other distributions.

Q Tell me this, Doctor Lennon.

When was the last time that you checked the middle-

Q Now, you also testified, as I recall, that the numbers of Negroes or the percentage of Negroes in the standardization process which you described, was, I believe you indicated, from five to seven percent.

Is that correct?

A We are talking now with respect to the Stanford and the Metropolitan Achievement Tests?

Q That is correct. Those are the ones you testified to yesterday.

A Yes, correct.

Q Now do you know what the national percentage of Negroes is to the total population?

A My most recent check on it is sometime ago.

I recall, not with total confidence, but with such accuracy as I can, that the total Negro population constitutes approximately 11 to 13 percent of the total United States population.

As I say, this is sometime ago, Mr. Kunstler, and I may well be off a couple of points there.

Q Now, Doctor Lennon, you remember on your deposition we set up a standard of, as I recall, a school system which had 90 percent Negro population and for which we used as an assumption 50 percent of the families were making less than



\$6,000 a year.

Do you recall that?

A I recall that, Mr. Kunstler, yes.

Q I will ask you the same question I asked you then.

Do you think that the use of a test, achievement or aptitude test, standardized, as you have indicated, would produce lower or higher scores if administered to pupils in that type of system?

A Would you tell me those percentages again, please, Mr. Kunstler?

Q I took it 90 percent or better, but we will use 90 as the dividing line -- 90 percent Negro population of whom at least 50 percent of their families had an annual income of \$6,000 or less.

A And if I remember correctly, Mr. Kunstler, the import of our consideration of the economic status was to suggest that in this community we are dealing with a below-average socio-economic group, is that correct?

We took the figure of \$6,000 as as denotive of something less than average economic status.

Q That is correct.

A Yes. On the assumption then that we are dealing with a community where the average income is lower than the

national figure, and that the national norms presumably are based on systems of typicality with respect to income, then I would say, as I believe I said at the time of the deposition, I would expect the performance on standardized tests of aptitude and achievement to be somewhat lower than for the national population on the premise that we know there is an association between socio-economic status and performance of the communities on the test.

Q All right.

Now, Doctor Lennon, I am going to read --

THE COURT: Just a moment. We will take a five-minute recess.

(Whereupon the Court took a short recess.)

ls.

natural outgrowth of the operation of the other sampling bases.

Q Does that mean, Dr. Lennon, that Harcourt-Brace, for example, your department, came to a policy decision that race was not a factor to be considered in the standardization of the achievement and aptitude test?

A Yes, sir. We have very definitely taken the position that in the standardization of our tests and the definition of samples, we will not use race per se as a dimension to be controlled.

Q You don't use race at all as a dimension?

A This is correct, sir.

Q Now, I just want to ask one procedural question, Dr. Lennon. I assume that you realize when you were called upon to testify here that you would be questioned extensively on the standardization of achievement and aptitude tests, is that correct?

A To tell you the truth, Mr. Kunstler, I did not know precisely which areas of expertise would be under most concern in these hearings. I think I would say, yes, among other things, I anticipated there would be inquiries on the standardization matters, although I must say that I thought the larger area of concern to be explored here

the predictive tests, have to be tested themselves empirically by the system using the tests; and if the test does not work out for that system on an empirical basis, then the test ought to be junked.

Isn't that your testimony?

THE WITNESS: Yes, sir.

THE COURT: Isn't that your question?

MR. KUNSTLER: That is my question.

THE COURT: All right. Let us proceed.

BY MR. KUNSTLER:

Q Dr. Lennon, are you familiar with Plaintiff's A-20, guidelines for testing minority children?

A Yes, Mr. Kunstler, I have seen this.

MR. CASHMAN: This is Plaintiff's Exhibit A-20 for identification, marked excluded October 4, 1966. Is that what you mean?

MR. KUNSTLER: That is right.

MR. CASHMAN: I want the record to show, Your Honor, that the document is not in evidence.

THE COURT: All right, sir. You may proceed.

MR. KUNSTLER: Yes.

BY MR. KUNSTLER:

Q Now, do you know who published guidelines?

MR. KUNSTLER: I was referring, Your Honor, to the conclusion, and I will read the conclusion to him and ask him whether, and I will read it in two parts, because there are two parts to it.

BY MR. KUNSTLER:

Q The first paragraph is page 143, Mr. Cashman.  
It states:

"Tests are among the most important evaluative and prognostic tools that educators have at their disposal. How unfortunate, then, that these tools are often used so routinely and mechanically that some educators have stopped thinking about their limitations and their benefits. Since the minority group child is so often handicapped in many ways his test scores may have meanings different from those of non-minority children, even when they are numerically the same. The task of the conscientious educator is to ponder what lies behind the test scores. Rather than accepting test scores as indicating fixed levels of either performance or potential, educators should plan remedial activities which will free the child from as many of his handicaps as possible. Good schools will employ well qualified persons to use good tests as one means of accomplishing this task."

That is the first, and I would like you to

indicate whether that squares with your own opinion.

A In general, Mr. Kunstler, I endorse those sentiments. I take small exception to one or two assumptions that seem to be embodied in some of the middle sentences. You will not be surprised to hear that I agree totally with the proposition that: "Tests are among the most important evaluative and prognostic tools that educators have at their disposal."

I tend largely to agree with the next sentence: "How unfortunate, then, that these tools are often used so routinely and mechanically that some educators have stopped thinking." My reservation there centers around the word often. Now one could say that if this happens with respect to the interpretation just only of the scores of half a dozen children, that is often and it is too often; and I wouldn't quarrel with that. But I think the reader who runs here will be disposed to believe that this phenomenon is very widespread, and I think there is no evidence that I am aware of that often really means often that way.

And the following sentence gives rise to the same reservation in my mind. "Since the minority group child is so often handicapped in many ways his test scores may have meanings different from those of non-minority children

even though they are numerically the same."

from

Now/the whole tenor of this morning's testimony you will realize that this is another way of saying what I have been saying here. But, again, I think that I would like to see some documentation concerning frequency, and on the whole I suspect that my belief is that it occurs less often than a reader here would quickly or casually come to believe.

Most certainly I endorse without reservation the sentence that: "The task of the conscientious educator is to ponder what lies behind the test scores." And the following sentence: "Rather than accepting test scores as indicating fixed levels of either performance or potential, educators should plan remedial activities which will free the child from as many of his handicaps as possible." Who can take exception to that? "Good schools will employ well qualified persons to use good tests as one means of accomplishing this task." I absolutely totally endorse that, Mr. Kunstler.

Q Now, would you turn to page 144, and I will read the last paragraph to you. And I think the simple way might be, if you don't mind, is to indicate which ones you don't agree with.

A All right.

Q "In testing the minority group child it is sometimes appropriate to compare his performance with that of advantaged children to determine the magnitude of the deprivation to be overcome. At other times it is appropriate to compare his test performance with that of other disadvantaged children--to determine his relative deprivation in comparison with others who have also been denied good homes, good neighborhoods, good diets, good schools and good teachers. In most instances it is especially appropriate to compare the child's test performance with his previous test performance. Utilizing the individual child as his own control and using the test norms principally as 'bench marks,' we are best able to gauge the success of our efforts ;to move the minority group child forward on the long, hard road of overcoming the deficiencies which have been forced upon him. Many comparisons depend upon tests, but they also depend upon our intelligence, our good will, and our sense of responsibility to make the proper comparison at the proper time and to undertake proper remedial and compensatory action as a result. The misuse of tests with minority group children, or in any situation, is a serious breach of professional ethics. Their proper use is



a sign of professional and personal maturity."

A Mr. Kunstler, I view that paragraph as a prudent, compassionate, and highly professional statement with the general import of which I am in full agreement.

I could cavil just a tiny bit with respect to the ordinary utility of comparing the performance of a disadvantaged child with that of an advantaged child. I think a far more useful comparison is with the typical child. I think we should evaluate the performance of the disadvantaged child in relation to that of other disadvantaged children, but we should also have an eye on the mainstream, the yardstick that describes the typical youngster across the country as the best symbol of what this disadvantaged child needs to have in mind as the competitive level into which he is likely to move.

MR. CASHMAN: Your Honor, at this juncture--

THE COURT: Wait just a moment. I am not sure the witness has finished.

MR. CASHMAN: Excuse me.

THE WITNESS: I think maybe I am willing to stop at that point, because to me the spirit that underlies this final paragraph here is one that I find extremely congenial. I think it would be nitpicking to pull out

BY MR. KUNSTLER:

Q I would say a population in a school system which contained many more disadvantaged children, for example, than the test population. Many more children in the lower socio-economic group.

A My opinion, Mr. Kunstler, is that the merits of the percentile band are the same whether one is dealing with a population very similar to the norm group or a-typical.

I think that it is a quite useful, sensible mode of interpreting scores. Other publishers seek to do the same thing with certain similar devices, and all of us consider it most desirable to alert the test user to this realization of the fact that the score is not an absolutely precise or true score, and to sensitize the user to the approximate range of error that we believe exists, and we do this whether it is a typical group or an a-typical group.

Q Now, Doctor, in your testimony this morning when we were discussing standardization of tests, and we were discussing a-typical groups of the type I have had in the previous question, I would like to ask you this. Is it possible to take these aptitude tests and achievement tests and to standardize them on something other than the the national norm? In other words, what we would call a local norm. To establish a local norm. Can that be done with the tests in

There would be no reason, again in principle, why one could not develop special group I. Q. norms, except that I. Q. traditionally has come to be thought of as a much more universal skill. The consequence is that we people wish to develop local frames of reference for interpreting results on intelligence or scholastic aptitude tests, they tend to resort, as in the case of achievement tests, to appercentile system for that kind of a conversion.

Q So I take it the answer to my question is that local norms can be established for the achievement and the aptitude tests?

A That is correct, sir.

MR. CASHMAN: If I understand the question of counsel, Your Honor, it was "How do you go about establishing local norms?" And I think the witness' answer was directed to that question.

THE COURT: I think the record supports that.

BY MR. KUNSTLER:

Q Now, Dr. Lennon, let me ask you this: If you have an atypical population such as the one we discussed before where you have a much higher percentage of disadvantaged children than in the test population, would it under some circumstances be desirable to establish local norms for the various tests

we have been discussing?

A Again I would say with respect to our comment on percentile bands, that the merits and the utility of local norms are present more or less independent of the relation of the local group to the national picture. Conceivably the more atypical, the more desirable. But I think the case for local norms is a very strong case even for groups quite similar to a national standardization group. Maybe if I were to say that the purpose of norms is to provide a kind of back-drop, let us say, against which we project an individual's score on a test, and to invite your attention to the fact that for various purposes various back-drops will be most relevant and helpful. It will help to see the place for local norms.

We can think of a child in a school system as a member of a number of competitive groups, his own school, children from his neighborhood, the whole system, the Nation, and so on.

Now, for some reasons it is more useful and helpful to think of him as a member of one competitive group, and therefore to express his score in terms of his standing within that group. For other reasons and other purposes it can be better to see him in the context of a different competitive group.

So that we say it is more helpful in understanding him, making forecasts, to relate his performance to this other group.

The issue, I think, is not most helpfully seen, whether it is better to use local or national norms, but rather to think "Now just what sorts of judgments are we making with this use of the tests which will point us in the direction as to this kind of norms or this other use would suggest another kind of norms."

All I am saying is that different frames of reference data are most appropriate in different contexts.

Q To put it another way, Dr. Lennon, would you say that if you used the national norm exclusively that the student in your system is in effect competing against the test group score?

A This is not too bad a statement, Mr. Kunstler. Competing has a little overtone that many teachers feel uncomfortable about. But indeed you are seeing him in relation to this national group. That is correct.

Q And if you established a local norm for this same student he is in essence being competed against the school system in which he happens to be?

A That is correct.

Q And if from a scientific standpoint what you have accomplished in doing that is control some of the sources of variance in the test scores of that group. The group in

## REDIRECT EXAMINATION

BY MR. CASHMAN:

Q Dr. Lennon, you indicated in your cross-examination, and in your direct examination, that race was not an element in the consideration of the standardization population at Harcourt, Brace, and in terms of the standardized tests that they produce.

Now, is that a fact?

A Yes, sir, Mr. Cashman, that is a fact.

Q Now, Dr. Lennon, may I ask you whether or not that would scientifically invalidate the accumulation of data on standardization at Harcourt, Brace?

A We think not, Mr. Cashman, subject to the conditions that I enumerated in connection with the discussion of arriving at that policy. Those conditions being particularly that we concern ourselves in building a norming sample with characteristics that we think are more directly related to performance on tests; that in doing so, whatever variance may be associated with race or ethnic classification is taken care of because of the control through these more direct and, I may say, more readily accessible pieces of information.

Q And do those pieces of information include an attempt to fix the socio-economic status of the individual and

also the cultural index, as you indicated before?

A Yes, sir.

Q Now, Dr. Lennon, would you describe for the Court the extent of the distribution at your last recent recount of the Otis Quick Scoring Mental Ability Test?

A I will have to express this first in dollar terms and then attempt to convert from dollar terms to approximate numbers.

The sales for 1965 of the Otis Quick Scoring series were of the order of 400 to 425 thousand dollars. Now, to translate that into numbers of pupils tested with the Otis series is a little difficult because of the fact that the sales include both booklets, which may be used many times, and answer sheets.

I do not have at my fingertips the numbers of both, but we use as a rule of thumb in our own calculations that a single administration of one of the tests in the Otis series will produce about ten cents in business. So if you divide my 400,000 by ten cents, you will have a fair estimate of the number of Otis Quick Scoring Mental Ability Tests sold. It would be 4,000,000.

I would say 4,000,000, if it is in error, would be



pursuit of those goals, yes, sir.

MR. KUNSTLER: I have no further questions,  
Your Honor.

MR. CASHMAN: Just a couple questions, Your Honor.

REDIRECT EXAMINATION

BY MR. CASHMAN:

Q Dr. Lennon, in connection with your experience with relation to teacher expectation, what other factors do you ascribe in your experience to the accumulation of the feeling that we have described as teacher expectation? Would you list those also, please?

A Well, I am sure that a teacher's expectations of what a child will do this year is conditioned somewhat by her knowledge of what that child has done last year and the year before. I suspect that her expectation is influenced by whatever knowledge and acquaintance she may have had with older brothers and sisters, by a knowledge of what kind of home the child comes from, as to whether he comes to school in the morning with a good breakfast or any breakfast at all, whether he has had a chance to get a night's sleep, and such things as evidences of availability at home of a reasonable place to study, evidences of behavior problems.



In other words, the totality of the child's personality, endowment, capabilities, and so on.

Now, how does a teacher do it? A teacher can't do this customarily in a very scientific way, that is, in a manner of saying: He gets so-and-so on the test, last year his grades were so-and-so, he gets a good breakfast four mornings a week, and so on, and so on, and so on, and adding it all up in some mystical fashion and saying, therefore, he will get a score of 72 on the history test at the end of the year. I don't think a teacher ever reduces expectation to that degree of refinement.

MR. CASHMAN: Thank you, Dr. Lennon.

I have no further questions, Your Honor.

THE COURT: All finished?

MR. KUNSTIER: Your Honor, no questions, but while the witness is here, I would like now to renew my objections to 58, 59 and 60, Defendants' Exhibits, inasmuch as they are completely non-probative for the reasons I gave yesterday, that they relate to no known sample group, they are completely silent as to what group was used.

The witness has testified that it was really a selection by whim of some twenty or twenty-four investigators and, therefore, Your Honor, because the witness is still here

## [ P R O C E E D I N G S ]

THE COURT: Good morning, gentlemen.

MR. KUNSTLER: Good morning, Your Honor.

MR. EARNEST: Good morning, Your Honor.

MR. KUNSTLER: I would just like for the record to indicate that R-68, which is now the affidavit, a satisfactory affidavit, from the Superintendent's Office of Prince Georges County has been submitted to the Clerk and the Corporation Counsel withdraws its objection to that exhibit, which was grounded on the basis of lack of affidavit.

MR. EARNEST: That is true, Your Honor.

THE COURT: Let R-68 be admitted without objection.

(Plaintiffs' Exhibit No. R-68  
was received in evidence. )

MR. EARNEST: Your Honor, at this time the defendant calls as their next witness Mr. Woodson.

Thereupon --

MR. GRANVILLE W. WOODSON  
was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. EARNEST:

Q Will you give us your full name, sir?

A My name is Granville W. Woodson.

Q And will you tell us what your employment is, sir?

A I am the Civil Structural Engineer employed as Assistant Superintendent of Schools, in charge of Department of Buildings and Grounds, D. C. Public School System.

Q And how long have you held that position, Mr. Woodson?

A Since October, 1962.

Q Now, before we go further into the duties and functions of your office, I would like to go, a little bit, into your educational background. First of all, would you tell us where you were born, Mr. Woodson?

A I was born in Washington, D. C.

Q And what about your elementary education, sir?

A I was educated in the elementary schools of this system. At that time we had grades 1 through 8. I then went to the Dunbar High School and graduated in 1926.

Q And following that?

A Following that, I went to the University of Pittsburgh and in 1930 received the degree of Bachelor of Science in Civil Engineering.

Q All right, sir. Then did you further pursue an educational course?

A Yes, I did. I studied at Howard University and

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received a Master of Science Degree in 1934.

Q Mr. Woodson, after you had received your Master's Degree from Howard, would you tell us what pursuits, employment-wise, you were engaged in following graduation?

A I worked with my father, who is also a structural engineer, in his private practice for a few years, and then I began to work with Mr. Hilyard Robinson in 1935.

Q Was that a construction firm or an engineering firm?

A Mr. Robinson is an architect and I was working on designing in his office.

Q All right.

A And in 1937 I went with the National Park Service.

Q In what capacity?

A As a Project Superintendent. And we worked in the State of Pennsylvania four years building parks or park structures roads, sewer water systems, park buildings, landscaping, gradings and this sort of thing.

Q All right, sir. And then?

A In 1941 I left the park service and returned to work with Mr. Robinson as a chief engineer on the design of a major army airfield.

Q And where was that project?

A This project was in Tuskegee, Alabama.

Q All right, sir.

A After that I came North again to work in Baltimore and Washington for Samuel Plato, who is a general contractor -- was a general contractor -- for two years on construction work.

After that I went to work for the Budd Company in Philadelphia in their design section. We were building a stainless steel airplane.

Following that I left to go into the Service. I was given a Commission in the United States Public Health Service as an Engineer and was assigned to duty in Liberia, where we designed a sewer and water system for the City of Monrovia, Liberia. I was chief engineer on this project. We did a number of other things. We carried on some drainage projects and malaria control work.

Following that, I came back to the United States and worked for the Budd Company for one year, and then I came to Washington as a Planning Engineer for the D. C. School System.

Q All right, sir. And what did your position as Planning Engineer with the D. C. School System entail?

A This involved the making of projections for new schools to determine where and just what sizes of projects we needed. It also involved the preparation of room standards which we use to describe to an architect what sort of things we want in the room and what size it shall be. We also checked

preliminary drawings and working drawings. We also make designs for alterations in existing structure; and that phase of the maintenance program, which by its nature needs technical investigation, this was also part of my job at that time.

Q All right, sir. There did come a time when you left that position, did it not?

A Yes. I came to work in the school system first in 1949 and I left in '51 to go back to Liberia, this time as a Municipal Engineer for the Point Four Program.

Q All right, sir. How long were you engaged in that?

A I was there until 1954, and my assignment was to develop for Liberia an engineering office which would deal with municipal facilities. And we did do this. We developed a branch which dealt with streets and drainage. This meant the design of streets totally, line grading, earth work, paving and the associated drainage. We developed also a section for surveys, land surveys, so as to define proper lines. And we also had a section for sewerage and water systems, where we were designing and installing extensions of existing sewer and water facilities.

And, finally, we had a section which issued permits for construction. We examined working drawings to determine that these drawings were in compliance with acceptable construction practices. And I wrote the zoning code for the City of

Monrovia.

Q Would you tell us about the city size-wise, as you recall it, the approximate population?

A In 1951, I believe the population was somewhere between 40,000 and 50,000. It is larger today.

Q All right, sir. Now, after you completed that operation?

A I returned to the school system here in Washington and to my job as Planning Engineer and continued in that position until 1962 when I was promoted to Assistant Superintendent.

Q All right, sir. Now, you held that position continuously since 1962?

A Yes, sir.

Q Now, Mr. Woodson, if you will, tell us briefly what the functions and duties of the Office of Assistant Superintendent of Schools, in Charge of Buildings and Grounds, is?

A We have charge of the total physical plants of the District of Columbia School System. We have its maintenance and we have one section which deals, almost entirely, with maintenance and alterations in the existing plants made necessary by the addition of personnel or the expansion of libraries or bookrooms. These are the kinds of alterations which require architectural work and this is done in my office. We also have

charge of all the custodian and engineering personnel, and there is a division of the office which handles this.

We have also another section in the office which deals primarily with new buildings which are being proposed, and are either in a design stage or construction stage, and after that a one-year guarantee period.

And we have a final section which deals with the question of the projection of pupil populations so that we will know where to build structure and how much structure to build.

Q Let me ask you this, Mr. Woodson: Would the planning for new construction or for the alteration or enlargement of existing structure depend, in large part, on the per pupil population expectancy?

A Yes. We have, of course, a certain existing capacity in the system. And where we are faced with increasing enrollments in the City, we must plan additional construction. And this might be an addition to a school or it might be a combination of an addition plus the elimination of old and outmoded facilities which we consider to be educationally inadequate. Or if this will not meet the need for a particular neighborhood, we would build a new structure, a brand new structure that is not associated with any existing structure.

Q Mr. Woodson, before you determine need, what steps



have been taken to establish what that need is by way of either a change in an existing structure, so as to enlarge it, or the outright building of a new school? How do you arrive at the point where need is demonstrated?

A Well, we have divided the City into 22 areas for elementary schools, and we work, largely, within these areas. These are groups of schools in a given neighborhood. And we watch each one of these 22 areas very carefully to determine the patterns of our pupil population. This, of course, is associated with the numbers of people who are in these various areas and how this changes.

Now, we do this in almost two completely different fashions. In neighborhoods where there is vacant land or land which is being changed in use -- by that I mean a more intensive and more dense use than it had in the past -- we start with our enrollments existing, and then we add to that the number of pupils that we expect to get out of new dwellings. And we watch and get a report daily on the building permits which have been issued. We will see, for example, ten houses, and we will call the architect or owner and find out how many bedrooms are in these houses, and knowing this we can assign a certain number of pupils. We would do this for apartment units. So that we watch building permits and we watch all zoning actions. We have a very close association with the National Capital

changed from white to Negro. Or, in other words, the Negro families have more children and we needed more structure.

Q Mr. Woodson, did you approximate for us what our percentage of increase will be when these facilities in being are completed as compared to what it was, say, in 1954? I know that question may not lend itself to a ready answer but, if you know it, I would like to have it.

A In the Powell addition or, rather, the Powell Annex, which was the old health school, it was 8 additional rooms. We added to the Powell itself, I think, about 11 rooms. That would make 19. We added about 14 rooms to the Raymond. That is 33. We added about another 14 to the Barnard. That is 33 and 14 equals 47. And this [indicating] will be a 26 room building.

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There is one other factor that we should bring out here. We have reduced pupil-teacher ratios in this time. However, part of this construction was needed before we reduced pupil-teacher ratios. So that some of it is attributable not only to the fact that Negroes moved into the neighborhood but we did change the pupil-teacher ratios.

Q All right, sir. Now, when you say you have changed the pupil-teacher ratio, is that something which has been given effect or are we planning to do that?

A No. In 1954 our standards were 36 pupils per

teacher or per room. Now, over the 10-year period from 1956 through 1966, we had finally worked ourselves -- we have gotten sufficient appropriations -- to give us teachers at the ratio of 30 to 1. We don't quite have rooms at that ratio.

Now, we are, again, changing the ratios, which will mean additional construction. So that with this combination, a reduction in ratio, plus the fact that the neighborhood changed from nearly all white to nearly all Negro.

Q All right, sir. Mr. Woodson, let me ask you which sections or districts on defendants' 74 would reflect the geographical area of the District which is, basically, West of Rock Creek Park?

A Areas 16, 17, 18 and 19 are basically white.

Q All right, sir. Before we leave that chart, would you tell us, from your knowledge and from what is depicted on that chart, whether you can identify any new construction, school facility-wise, in those four areas, 16, 17, 18 and 19?

A In this period, fiscal years '54 through '66, we added four rooms to the Deal Junior High School; and we have not done any other construction in those areas.

Q All right, sir. I believe we do contemplate one other project, and that would be Gordon Junior High School, but that is not yet effective; is that correct?

A That is in the six-year program which the Board

Negroes.

Q All right, sir.

[Defendants' Exhibit 74 was removed from the blackboard by Mr. Earnest and Defendants' Exhibit 75 was placed on the blackboard.]

Mr. Woodson, the percentages you just gave us are the percentage of total enrollment in both elementary and secondary?

A No, sir, it is the percentage of the elementary school enrollment.

Q Of the elementary school system?

~~A~~ Of the elementary school system.

Q All right. Now, Mr. Woodson, I point to defendants' exhibit number 75 for identification and ask you if you can tell us what that is?

A This is a map showing 22 elementary school areas and it shows the structure which we propose for the next six-year program, the program runs from fiscal year '68 through fiscal year '73.

The red dots are new schools and additions. This would be [indicating] an addition and this one [indicating] is a new school. The red dots new schools and additions.

The blue dots - building replacements. These are buildings which are educationally inadequate and we propose to replace those.

And the yellow dots represent buildings which are sound in structure but lack certain modern facilities which would be placed in a new plant.

Q All right, sir. And let's go one step further, what about the red triangle and the red rectangle?

A Yes. The elementary schools are, again, shown in circles, the junior high schools in triangles and the senior high schools in rectangles; squares.

Q I believe you said, Mr. Woodson, that represents the six-year projection as being what we contemplate our needs will be, school facility-wise, during that period, namely, '68 through '73. How was that projection arrived at so as to, in turn, reflect what we see on defendants' exhibit 75?

A Well, we used the same bases which I explained earlier. There is one difference between this program and the things that we were doing between 1954 and 1966. The Board of Education has approved a new pupil-teacher ratio of 25 pupils maximum per teacher. This results, really, in an average of about 24 pupils per teacher, and we need this average in order to determine the number of rooms we will need. There will be classes for individualized instruction where the pupil-teacher ratio is a maximum of 18; and our average worked out to be 17. This means that because we decreased the number of pupils that any given teacher is going to teach a certain number

of pupils will need more seats or more rooms, rather.

Q All right.

A And, therefore, we have programmed a great deal of construction here. Most of the red indicat-s construction to get us down to these new ratios. Some of it, as I said before, we are not quite down to our 30 to 1, and some of it will, first of all, give us seats for the ratio of 30 to 1.

In addition to that we have programmed a replacement of every old and educationally inadequate school in the system. These are represented by blue dots.

Most of these structures will be anywhere from fifty to close to one-hundred years old. We have one building in operation which is ninety-eight years old.

Q Just out of curiosity, which one is that, Mr. Woodson?

A This would be the Stevens School at 21st & L Streets. And we have three such buildings in this area.

Q That is in Area 15?

A That is Area 15. We have the Grant, the Sumner and the Stevens. And we plan to replace these older buildings, Grant and Stevens. Well, one of these, the Grant, is an 8-room building. The Sumner is a 10-room building. And the Stevens is a 14-room building. We would replace this total room space with a single building on the Stevens site. This is, of course,

Q And that is an expense factor, is that right?

A Yes.

Q Let me ask you this, Mr. Woodson. In today's approach to the site acquisition, do you have a policy with respect to including a factor for consideration that of stabilizing the neighborhood, insofar as its Negro and white makeup is concerned?

A Yes, we do.

Q Now, let me ask you a further question. How long has it been a part of the policy in site acquisition to consider this affirmatively as one of the elements that underlies site acquisition?

A I would say for the last three to four years that we have made a positive effort to provide for integration where we could.

Q All right, sir. And prior to that time?

A Prior to that time we really didn't have this policy. We were locating the buildings where needed but without regard to interracial factors.

Q All right. I would ask you this: Today, even considering this affirmatively as an element in site acquisition, what is our prime policy in determining where a school will be located? Does it still remain need, or does it still constitute need as the basic ingredient?



A Yes.

Our reasons for building today are primarily the need for seats, the replacement of old structure, and we didn't get to these yellow dots [indicating] but they represent --

Q We will, Mr. Woodson.

A -- Modernization.

Q All right. On the chart, exhibit 75, do you see examples of locations for schools which reflect this attempt to stabilize a neighborhood, as we now know it? And by that I mean this is a projection and we don't know what the neighborhood will be when the school is built. But, with that background, do you see examples in which we plan to try to stabilize an existing neighborhood in which we have both Negro and white families?

A Yes, I think there are some. This [indicating] is an existing school. We propose to add to it.

Q Now, that is in area --

A Area 21. This is the Shepherd School.

Q All right.

A At the present time this is a mixed community or percentage of 79.8% Negro, but there are white families in this area and these schools are mixed. Anything we build in here would make the school, as a system, more adequate and, therefore,



more desirable in its holding power, of course. It is a matter if we get the structure we will not have overcrowded schools, and this is one of the factors which would require attention. We plan to build this junior high school which would have the same effect.

Q All right, sir. And that is in Area 1?

A The junior high school area is Area 2 and in the elementary area it is 1; yes.

Q All right. Now, is that the school that we propose to locate at 13th and Van Buren?

A Yes, this is a proposed school at 13th and Van Buren, a new junior school. And it would have an integrated pupil population provided ---

Q The stability remains as we now know it to exist, or the stabilized factor, as it now exists, if it continues, we will have an integrated school?

A Yes, sir.

Q But we don't know what will happen between now and construction?

A We don't know, but if the factors remain as they are today, we would have an integrated school.

Q All right. I ask you to look at Area 14. Do we have examples of the same type that appear in that area?

A Yes. There are white families in this portion of

~~3913~~

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This is April, '66. The count is 69.9 or 70% Negro in this Area 14.

Q All right. Now, let's take some other area -- I withdraw that. Mr. Woodson, I ask you if there are any other areas reflected on the six-year projection, which we are discussing, which seem to have the same possibility as that you have discussed f-r us in Area 14 and in Area 21?

A I might say that in Area 20 we propose an addition to the Lenox Annex or to the Lenox School. This one is funded for replacement but we propose to add to it, and that is the reason the dot is here [indicating on defendants' exhibit 75].

Now, this area is East of the United States Capitol and is being restored and white families are moving in. So if they avail themselves of the public schools, then these facilities would provide an integrated school population.

The Area 22 is the new Southwest and there are white families down there. The school age enrollment there, the elementary system school age enrollment, are 89.1% Negro. But there is potential [indicating] here for integration. There is already integration but, potentially, more.

Q All right, sir. Are those the only areas, based on percentages and your studies, that appear to have possibility of becoming integrated in a real sense?

A Yes, in any meaningful way. Most of these areas will have a few white pupils. You can see, for example, maybe 3% of these are white [indicating].

Q That is in Area 4?

A This [indicating] is in Area 4.

Q What is the exact percentage there?

A It is 97.3% Negro. Roughly, 3% white.

Here [indicating] in area 2 we are 98.3% Negro. Roughly, 2% white and 3% white in this neighborhood [indicating].

Q That is Area 1?

A Area 1.

There is very little potential there [indicating].

Q That is --

A In Area 8. Area 8 is 99.3, which really means that there are extremely few, 1%, white pupils out there.

Q All right, sir. And, on the other hand, for Areas 16, 17, 18 and 19 -- so that the record will reflect it -- what are the percentages of Negro enrollment in those districts?

A Area 16 is Georgetown and our percentage here is 26.3% Negroes, 74% white.

Here in Area 17 -- this is out along Foxhall Road and MacArthur Boulevard, pretty far to the West -- the percentage of Negroes is 4.8 and roughly 95% white.

In area 18 we have --

Q Would you, briefly, tell us what the geographical makeup is?

A Yes, this [indicating] is Connecticut Avenue through here and Wisconsin Avenue here. This line is Massachusetts Avenue. This would be Calvert Street. So that we are West of Rock Creek Park and generally along Connecticut Avenue and North of Massachusetts.

Q All right. And the percentage there?

A The percentage there 9.8% Negro and, roughly, 90% white.

And in Area 19, which is the far Northwest, we are 1.6% Negro and, roughly 98% white.

Q All right, sir. Now, Mr. Woodson, I believe you told us that the yellow circle on your legend represents structures which are structurally sound but they, educationally, need updating facility-wise; is that right?

A That is correct.

And, as an example of this, here is the Mann School [indicating].

Q All right. Now, let me ask you -- Go ahead, sir, I have no objection.

A All right. This [indicating] is the Mann School. It is a 10-room building, 10-classroom building.

Q Located in --

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A Located in Area 17 just to the South of American University.

Q All right, sir.

A And this school is entirely classrooms. It had one kindergarden in it. There were two rooms called practical art rooms, one for boys and one for girls, where they learned sewing and cooking. We don't have this anymore. It had a small teachers' room and a small principal's room or office. In today's modern planning, if this building were to be made equal to today's modern planning, we would build an assembly hall, which would also serve as a play room and lunch room. We would put a more adequate principal's office in. We would build a library. We would build a health room. We would build also a special room for reading and another room for speech instruction. These would be the additional auxilliary facilities which we put in new buildings but which this building lacks.

Q All right. While we are on that point, Mr. Woodson, let's take, beginning with Area 16, tell us, if you will, what existing facilities in that area are identified by your yellow circles legend.

A In Area 16.

Q Yes.

A We don't have any yellow within 16. We have some in 17.

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Q All right. Now, moving to Area Number 17, which is the area, I think, which you described as being our far Western or along Foxhall Road with the Potomac River to the South. Tell us how many of your yellow legend markings appear in that area? And identify them for us.

A Four. We have four elementary schools there today, all of which need modernization.

Q Give us the names of those schools, if you will?

A This [indicating] is the Hardy School on Foxhall Road at -- I believe that is -- R Street.

Q Could you tell us when that school was built, Mr. Woodson?

A It was built in the late 20's or the early 30's. I would have to refer to the records.

Q Would you do that?

A It was built in 1933 and we put an addition on it in 1937.

Q All right, sir. Then let's move to another one of your yellow markings in Area 17.

A This [indicating] is the Stoddert School.

Q Where is that located?

A This is along Calvert Street at about 39th to 40th.

Q All right. Would you tell us when that one was constructed?

A Roughly, about the same time. Stoddert was built in 1932.

Q All right, sir. Let's proceed to the third one.

A This would be the Key School [indicating].

Q Where is that located?

A That is North of MacArthur Boulevard. And I can't read this [indicating to DX No. 75]. I have the address here [indicating to papers in front of him]. The Key School is at Hurst Terrace and Dana Place. The original building was built in 1928 and we added a second floor in 1932.

Q All right, sir. Now, if you would go to the fourth school in Area 17.

A This is the Mann Elementary School on Newark Street at 44th Street. This is the one where American University is. It was built in 1931.

Q And they are the only elementary public schools that appear in Area 17, are they not, sir?

A Yes, sir, they are.

Q Now, let's proceed to Area Number 18.

A In Area 18 we have the Oyster, the Eaton and the Hearst Schools.

Q All right, sir. Taking them in that order, tell us where Oyster is located and when it was constructed?

A Oyster is at Calvert Street and Cathedral Avenue, I think this is [indicating].

Q All right, sir.

A Oyster was built in 1926.

Q All right, if you would proceed to the Eaton School then?

A The Eaton School was built in 1911 and had an addition in 1923, and another addition, I believe, the assembly hall, in 1931.

The Hearst School --

Q And Eaton is located where?

A Eaton is 34th and Lowell.

Q All right, sir.

A And the Hearst School was built in 1932 on Tilden and Idaho Avenue.

Q All right. Now, Mr. Woodson, in Area 18, are they the only three public elementary schools that we have?

A Yes, they are.

Q Then let's proceed to Area 19.

A In Area 19 we have the Janney Elementary School, the Murch Elementary and the Lafayette Elementary School.

Q Where is the Janney school located?

A Janney is at Wisconsin Avenue and Albemarle Street. It was built in 1925 and had an addition in 1932.

The Murch is at 36th and Ellicott Streets. This is just back, to the West, rather, of Connecticut Avenue.



Q Yes.

A That was built in 1929 with an addition in 1931.

Q And the Lafayette?

A The Lafayette is at Northampton and Broad Branch Road. This is Broad Branch [indicating on DX No. 75]. It was built in 1931 and had additions in 1938 and 1942.

Q And are they the only elementary public schools that appear in Area 19?

A Yes, they are.

Q To your knowledge, Mr. Woodson, do any of the schools that we have just discussed as being located in Areas 17, 18 or 19 have lunch facilities for the enrollment?

A No, they do not. In the new buildings which we are building today we provide a full-fledged kitchen with hot lunch facilities and serve hot lunches. Now, none of these schools have this equipment.

Q What about library facilities?

A None of these buildings have what we describe as a standard, bona fide library. They have, possibly, converted a room into what would be a substandard library. We began to build libraries as such about 1950. So these buildings don't have standard libraries.

Q All right. What about an auditorium or a meeting hall?

A These four schools in Area 17 do not have auditoriums,

none of them.

Oyster has an auditorium, Eaton has one. Hearst has not.

These three schools [indicating on DX No. 75], the Janney, Murch and Lafayette, do have auditoriums.

Q All right, sir.

A Do each of those schools provide a separate office for the principal? I mean, does each principal have an office?

A Each principal has an office but not of the same standard that we would build today. In these schools the clerk, for example, and the principal will be in the same room and there is not the opportunity for private conversations with the parents unless, by chance, she goes into the teachers' room.

Q All right, sir.

MR. EARNEST: Will the Court indulge me one moment?

THE COURT: Certainly.

MR. EARNEST: Mr. Clerk, will you mark each of these, beginning with the Webb School, for identification.

THE DEPUTY CLERK: Defendants' Exhibit Number 76 marked for identification.

MR. EARNEST: Gibbs Elementary School.

THE DEPUTY CLERK: Defendants' Exhibit Number 77 marked for identification.

MR. EARNEST: Rabaut Junior High School.

THE DEPUTY CLERK: Defendants' Exhibit Number 93 marked for identification.

MR. EARNEST: And Roper Junior High School.

THE DEPUTY CLERK: Defendants' Exhibit Number 94 marked for identification.

(Defendants' Exhibits No's.

76, 77, 78, 79, 80, 81, 82, 83, 84,

85, 86, 87, 88, 89, 90, 91, 92, 93,

and 94 were marked for identification.)

THE COURT: Before we leave this chart [indicating to DX No. 75 on the blackboard], do you have an estimate on the cost of this six-year plan?

THE WITNESS: Yes, Your Honor.

It is, however, a very informal, not quite accurate estimate. We think that this will be, the cost, about \$300,000,000.00 [Three-Hundred Million Dollars]. It will cost that, we think, to complete this plan. Now, we will have, within the next two months, I think, a more accurate estimate of this.

THE COURT: That is the construction and renovations and alterations such as shown on defendants' exhibit 75?

THE WITNESS: Yes, sir. This, of course, includes

the funds for the sites, plans, construction and equipment.

THE COURT: Thank you.

BY MR. EARNEST:

Q Mr. Woodson, the defendants' exhibits for identification numbers 76 through 94, inclusive, are photographs of schools within the District of Columbia Public School System. I would like for you, if you will, to take each one and identify the school and its location and state whether or not it has been constructed since 1954; and by location, if you can give us the area. That would be adequate for this purpose, sir.

A This [indicating] is the Ruth K. Webb School in Area 6 along Mt. Olivet Road and Holbrook Place. It was constructed during this period.

Q Since 1954?

A Yes.

Q And defendants' exhibit number 77, sir?

A This [indicating] is the Gibbs Elementary School. It is, in fact, the newest elementary school, for Area 7 here at this point [indicating on DX No. 75]. It is at 19th and E Streets, Northeast.

Q That is our newest one?

A Yes.

Q Defendants' 78 for identification?

A This is the Green Elementary School at Mississippi Avenue and --

Q Mr. Woodson, I believe for this purpose if we just identified them by areas would be sufficient.

A All right. Area 9.

Q Defendants' Number 79 for Identification?

A The Harris Elementary School built for Area 8.

Q Was that since 1954?

A Yes, it is in this neighborhood.

Q All right, sir.

MR. EARNEST: Your Honor, would you care to see these photographs?

THE COURT: Wait until after you offer them. I don't think there will be any objection to them.

Are you going to object to these?

MR. KUNSTLER: None whatsoever.

MR. EARNEST: I would move at this time that each of the defendants' exhibits 76 through 94 be admitted in evidence.

THE COURT: They are admitted without objection.

(Defendants' Exhibits No's.

76, 77, 78, 79, 80, 81, 82, 83, 84,

85, 86, 87, 88, 89, 90, 91, 92, 93

and 94 were received in evidence.)

BY MR. EARNEST:

Q All right, sir. Now, I hand you defendants' exhibit 80.

A This is the Miner Elementary School built for Area 6. It is near 15th and H Streets, Northeast.

Q And our exhibit number 81, Mr. Woodson?

A This is the Garrison Elementary School built for Area 12 at 12th and F Streets, Northwest, right in here [indicating on DX No. 75].

Q And since 1954?

A And since 1954.

Q Defendants' Exhibit Number 82?

A This is the Lewis Elementary School built in Area 13, close to Howard University, since 1954.

Q All right, sir. And defendants' exhibit number 83?

A This is the Meyer Elementary School, built at 11th and Clifton for Area 3, and built since 1954.

Q And defendants' exhibit number 84?

A This is the Amidon School built in 1964 for Area 22 at 4th and Eye Streets, Southwest.

Q All right, sir. And defendants' exhibit number 85?

A This is the new McCogney Elementary School, built for Area 9, at Mississippi Avenue and Wheeler Road.

Q And that is a new school?

A This is a new school. In fact, we opened it this fall.

Q All right. That [indicating] is number 86.

A This is the Watkins Elementary School at 12th and D Streets, Southeast, in Area 5.

Q All right, sir. And new construction?

A New construction since 1954.

Q And number 87?

A This is the Houston Elementary School built in Area 8 at 50th and Nash Streets. It is a new elementary school built since 1954.

Q And number 88?

A This is the Wilson Elementary School at 6th and K Streets, Northeast, Area 7, built since 1954.

Q And number 89?

A This is a rear view of the Ballou High School, our most recent high school, built at Second Street in Anacostia, not far from Bolling Field.

Q That is in Area 14?

A Yes, in the elementary system.

Q When was that built?

A This was completed in 1960.

Q Thank you. And I hand you defendants' number 90.

A This is the Backus Junior High built at South Dakota

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Avenue and Galveston Street, I think it is, at this red triangle [indicating on DX No. 75.]

Q Is that Area 1?

A This is in the junior high school area, Area 2.

Q But for our chart, exhibit 75, it is area 1?

A Yes, it is Area 1.

Q And that is new construction?

A That is new construction.

Q I hand you defendants' exhibit 90.

A This is the Evans Junior High in Area 8 at 56th and East Capitol Streets, built since 1954.

Q And I hand you defendants' 92.

A This is the Hine replacement at 8th and Pennsylvania Avenue, Southeast, in here [indicating on DX No. 75].

Q That is Area 5?

A Yes.

Q It is almost on the line.

A It is on the line. It is in Area 20 as these lines go. This was completed this past year.

Q As a replacement for pre-existing structure?

A Yes.

Q I hand you 93.

A This is the Rabaut Junior High School at North Dakota and Kansas Avenues built at this point [indicating on



DX No. 75].

Q All right, sir. And that is a new one, is it, sir?

A Yes. It opened this fall.

Q I hand you defendants' 94.

A This is the Roper Junior High School in Area 8 at this point [indicating on DX No. 75]. That would be 49th and Nash Streets, and it is another junior high which opened this fall, just completed.

Q All right. Now, Mr. Woodson, all of those schools, the new schools we just talked about, are in areas other than in West of Rock Creek Park situations, is that not true?

A Yes, sir, this is true.

Q All right, sir. Now, I would like to go to the question of the Rabaut School. I believe --

THE COURT: I think this might be a good time to take a 5-minute recess.

THE DEPUTY MARSHAL: This Honorable Court stands recessed for 5-minutes.

[Whereupon, at 11:35 a. m. the Court recessed as noted.]

Q Yes, as compared?

A I would say -- Well, 90, 91 or 92 or 93% white was the ratio.

Q All right. Now, proceeding to Coolidge, which encompasses a much larger drawing area. Following integration, do you have any information as to what the racial makeup of Coolidge was after integration?

A This would be about the same as Paul. Coolidge was a white high school in a white neighborhood. There were some Negroes who did go to Coolidge immediately after integration in 1954. But the percentage was probably about the same as Paul, somewhere in the neighborhood of 90%.

Q All right. Before it escapes me, Mr. Woodson, I want to ask you one or two questions about standards, if we have the same, as they relate to school design; and I would start with elementary schools, new construction. Do we have standards concerning our new schools?

A Yes, we do. We do have such standards and we began to make standards in 1950.

Q Tell us, basically, what we look for or contemplate when we develop or build a new elementary school, as to its size, facilities, etc.?

A We are building today the regular classrooms and every building that is built is built with the premise that

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eventually it will be a 34-room building if it is not when it is started. We build a number of 34-room buildings but we might build a 24-room building expecting later to make it a 34-room building.

Q Then I gather, from what you say, that our basic design contemplates a 34-room elementary school?

A Yes, it does.

Q And what are the main elements that go into the makeup or use of those rooms?

A A typical 34-room elementary school will have 30 regular classrooms for grades 1 to 6. It will have two kindergardens and two rooms for special academic classes. It will also have an assembly hall which, as I mentioned, is a combination assembly hall, lunch room, play room, together with a hot-foods kitchen. It will have an adequate principal's office, including space for counseling, assistant principals, psychologists and social workers. It will have a library, a health suite, a special reading instruction room and an instruction room for speech.

In most cases, we will also provide certain facilities for the D. C. Recreation Department, and it will have the development of the playground and the landscape are in the front of the building.

Q And in our new construction which is taking place,

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the construction that we discussed in those photographs of elementary schools, are these standards included in those structures?

A Yes, they are. We prepared these standards with the educators. My office really serves as the architect who translates educational requirements in terms of words into a drawing which gives the size of the room and the equipment which would go into it. These committees of the educators usually consist of two or three principals, several teachers and, in the case of a specialized area like art or science, the head of that department will participate.

Q All right, sir. Now, leaving elementary schools and proceeding to the junior high schools, do we have standards concerning the design, construction and utilization of that type of school?

A Yes, sir.

Q Would you tell us what they are?

A Well, the secondary schools, junior high schools, will have regular classrooms but also a large number of specialized rooms, specialized rooms for science, for music, for art, for domestic science, for boys' shops for woodworking, the metal and general shops, the mechanical drawing rooms, and we also have typing rooms. And we will have speech and reading rooms in these also. And, further, we build a gymnasium with

our secondary buildings. This has a gymnasium which is large enough for us to have a standard basketball court when it is opened. It is usually divided by a folding partition with the girls on one side and the boys on the other. We will have, when open, a regulation-size basketball court for competitive sports. We usually have 400-seats for spectators in the junior high school. And we always build facilities for the Recreation Department in the Junior High Schools. These will be activity rooms, in addition to a 4500-foot space for the Recreation Department largely. They get the full use of the gymnasium and the exterior grounds. I believe that is a pretty good description.

Q All right, sir. Before we proceed to the next level, I would like to ask you: Included in our standards, do we think in terms of maximum enrollment, for instance, in an elementary school, according to the standards you described for us?

A Yes. For example, the combination lunch, assembly hall and playroom is built to standard size, even though we might be building only 24-rooms initially. We would build the full-size assembly hall.

Q All right, sir. What would we contemplate in a 34-room elementary school as to the maximum enrollment, is that based on a per room figure, or what?

A Well, it is based on a per room figure, but the

would that be better?

THE WITNESS: I think it would be and we, of course, have other possibilities in this particular piece of ground for this proposed junior high school at Van Buren Street. We put it here with the knowledge that it will serve white as well as Negro pupils, and in that sense we make a positive effort toward integration. We might conceivably put it down here somewhere [indicating] where the neighborhood was 100% Negro and not achieve integration.

THE COURT: All right. Ask your next question.

BY MR. ANKER:

Q I understand that, insofar as one particular school is concerned, but I would like your testimony as to what the policy is, in general, if you can state it, on this question of integrated schools, building schools to promote integration?

A I would say this, that if there is a potential for integration, we will locate the school in the most favorable spot to promote integration.

Q This is the policy as of today?

A Yes, it is.

Q Now, when was that policy adopted?

A Well, as I said, I think we began to think positively along these lines in 1962 and '63.

Q Do you recall, approximately, what the ratio of Negro to White pupils in the system was as of that time?

A Somewhere in the high 70's, I think, at that time. The percentage of Negroes was somewhere between 75 to 80%.

Q And this is the period when you began to think positively about promoting integration?

A Yes.

Q Now, could you be more specific as to how the policy developed; whose policy was it? Is it a written policy, for example? Is it in writing?

A Well, this, of course, would be a Board of Education policy, and I think in this calendar year, 1966, they have been working toward making a statement of such a policy. To my knowledge, this hasn't been done by the Board of Education. So what we have been doing in terms of policy is, I would say, administratively a decision.

Q Who made that decision, going back to the years now 1962 or '63?

A I think that all decisions are ultimately made by Dr. Hansen.

Q Was there some discussion of any kind or meetings of any kind which preceded the making of that decision, that you know of or were involved in?

A Well, this subject has come up a number of times in

our staff meetings. I don't recall that we had one that was devoted exclusively to this problem.

Q Have you personally raised it in staff meetings?

A Well, yes, because when we select sites. For example, one that I didn't mention before, but it is over here in Area 7 [indicating] just east of the Capitol. We were definitely trying to locate the school in such a manner that it would have both Negro and white students in it, this blue dot [indicating on DX 75]. When we did this, I most assuredly apprised Dr. Hansen of the fact that this was what we were attempting to do.

Q You are speaking of Area 7 now?

A Yes.

Q A decision was made to build the school in Area 7. I assume, from your earlier testimony, that the reason for that decision was a burgeoning population in that particular area which required a new school; is that correct? That was the need for a school in that particular area?

A That is partially correct. Actually, we have just opened the Gibbs for Area 7. And we have authorized a new building, a replacement, which gave us additional capacity over the three schools which it would replace. And with those two authorized projects we would be down to our ratio of 30 to 1. In that sense [indicating to Area 7] these schools are not



that arises at the later stages of your consideration?

A No, I would say that in 1962 we were thinking of integration for both of these buildings and we were trying to so locate them that they would have white students and Negro students.

Q Was there ever any general policy statement promulgated, as far as you know, written or oral, either by the Board or Dr. Hansen, to the effect that integration should play some role in the selection of sites?

A It has been discussed in the Board, but I don't recall any written directives to this effect. There was, of course, a policy statement in 1954, which stated that there would be complete and full integration of the District School System without regard to race.

But it did not make any mention of the specific factor of locating schools in such a manner as to promote integration.

Q And since 1954, has either the Board or Dr. Hansen had any communication to you and directed you to consider this as one of the elements in the location of schools?

A Yes, but, as I say, I don't recall that we had any written directives.

Q Well, what was the directive, whether it be written or oral?

MR. EARNEST: I think this witness has answered that several times, and beginning in '62 and from that time on this has been one of the factors in the policy.

THE COURT: I think counsel is trying to locate when the directive came, what the directive was and the form in which it came. I think this is what he has in mind.

MR. ANKER: That is right, Your Honor.

THE COURT: Was there ever a time when either the Board or Dr. Hansen communicated to you or perhaps others that this integration factor was to be considered and used in selection of school sites? And you have already testified that there was no written instruction from Dr. Hansen or the Board on this; is that correct?

THE WITNESS: Yes, sir.

THE COURT: Now, do you know, specifically, of a time when an oral directive of this kind came to you, perhaps along with others in the school system, from either the Board or Dr. Hansen?

THE WITNESS: Your Honor, I think the year was 1962.

THE COURT: I think counsel is interested in time or place, if you can give it. I realize it is difficult but something as serious as this might stick in your mind.

THE WITNESS: I think that the calendar year 1962 was probably the year. I don't think that I could give you a

better answer, sir.

THE COURT: Do you think th is happened at a staff meeting of some kind?

THE WITNESS: Yes, conceivably, it could. But the way we operate, I generally take in our building program to Dr. Hansen for a quick review before we have a full-fledged staff meeting. We do bring in the educational superintendents, in fact, practically the whole staff to review one of these six-year programs. And it could have been either in the informal go-around with Dr. Hansen or in the staff meeting consideration.

THE COURT: All right. I think he has given you as much as he can on it.

MR. ANKER: All right, Your Honor.

BY MR. ANKER:

Q Has there ever been any discussion or determination as to how much priority should be given to this matter of integration as against other considerations, such as the convenience of the location or the expense of acquiring property, or any of the many other factors that go into site selection? Has there been any discussion within the staff that you participated in or know about as to how much weight to give to the factor of integration?

A Well, there has been. There are not very many

opportunities for significant integration within the City, but wherever there have been within these last four years, I would say that the effort to provide integration is a prime consideration, probably weighing equally with cost if not more so.

Q Now, directing your attention to defendants' exhibit 75, would you state again what the yellow dot in Areas 17, 18 and 19 signify?

A They represent modernization of these school plants, all of which were built in the 30's or prior to that time and did not have facilities which we consider necessary today. For example, a library.

Q Now, what is the racial population of those schools in the 17, 18 and 19 areas?

A Almost entirely white in Area 17. We have approximately 5% Negro pupils.

In Area 18 approximately 10%.

And in Area 19 there are 1.6% Negro pupils.

Q And what is the situation in terms of utilization of space? Are these schools over or under capacity?

A They are under capacity. The Murch School is -- Possibly the Murch and the Lafayette are the ones which are closest to official capacity.

Q Now, directing your attention to Areas 1, 2 and 3,

and limit it to those for the moment, what does the red dot signify?

A These signify proposed new buildings, completely new buildings, or additions to existing buildings.

Q And is this true also of the red triangle?

A This would be a new junior high school. And this red triangle [indicating] is an addition to existing Macfarland Junior High School.

Q I see. Now, has any consideration been given to the possibility of building new schools somewhere equal distance between 1 and 19 or 2 and 18, 3 and 18, rather than remodeling these old schools in 18 and 19 for the purpose of drawing white and Negro populations from both sides of the park?

A Well, I think that we could only do this reasonably by building in the park.

THE COURT: What about that? What about within the park?

THE WITNESS: Can we build in the park?

THE COURT: Did you ever give a thought to building a school, a junior and senior high school, say, for 10,000 capacity in the park; did anybody ever think about that?

THE WITNESS: No, Your Honor. I would say that we have not thought about it.

THE COURT: It wouldn't be infeasible?

THE WITNESS: In the past. Just yesterday we had a staff meeting which was devoted to precisely this question. But this was yesterday. But in the past we have not, we have been building neighborhood schools. And knowing Rock Creek Park, it is very rough terrain and it is heavily wooded, and, normally, we probably would not be trying to build in the park. We would have to, I think, under our past methods of operating and arriving at conclusions, say that we don't want a school in Rock Creek Park; under our past criteria.

THE COURT: Well, it is 1:00 o'clock now.

Mr. Cashman, we are having more reporter trouble. Would you kindly direct your attention to that during the noon recess.

MR. CASHMAN: I will contact Mrs. Watson in the interim, Your Honor.

THE COURT: We will recess now until 2:15.

THE DEPUTY MARSHAL: This Honorable Court stands recessed now until 2:15.

[Whereupon, at 1:00 p. m. the Court recessed as noted.]

neighborhood? Is each zone considered a separate neighborhood for purposes of implementing the neighborhood school policy, for example?

A I think we have a question of what you really mean by neighborhood. This is a very large area and when we talk about a neighborhood, I don't know whether that is what you mean by a neighborhood.

Q Well, what I am really trying to find out is what you mean by neighborhood, because I think in answer to a prior question about the feasibility of building new schools in 19 and 18, in order to draw pupils from the east side of the park, you indicated that that would be undesirable at least under present policy because it would interfere with the neighborhood school concept.

Now, it appears to me that a school which would be on the eastern fringes of Areas 19 and 18 would be as close, in terms of distance, to some areas of 1, 2 and 3 as it would be to some areas of 19 and 18. So I am really trying to find out what you mean when you say that would interfere with the neighborhood school concept.

How do you define a neighborhood?

A Well, I think that we attempt to build elementary

schools within walking distance, reasonable walking distance of elementary-aged pupils. Now, I think that by and large we do this. And as I stated this morning, one of the things that we did was to find a suitable grouping of schools where we might change boundaries.

In the case of Area 19, if we had an increase in population, such that we needed to add seats in the total area to accommodate pupils, we would first of all see whether we couldn't do this in the Murch School since this is a center school. This would mean that the Lafayette boundaries would be changed and so would the Janney boundaries. They would be reduced and Murch would be enlarged.

In that sense, this is one of the factors. We don't have a group of one school, for example, except at this point, and this is completely cut off by these barriers. So we are trying to regroup them, first of all, so that we could change the interior boundaries to take the best advantage and build the most effectively and efficiently.

Q Since 1956, when you first established these boundaries, have you ever built a school outside of one of the zones for the purpose of relieving the problem existing within the zone? If you understand the question.



A No we haven't. We have built on the edge but not outside.

Q Could you explain why that is?

A Why we build within the zone?

Q Yes.

A Because the pupils are within the zone.

Q O. K.

With reference to that last answer, when you say the pupils are within the zone, what pupils are you specifically referring to, since obviously there are also pupils outside the zone?

A Yes. Well, if we need a school in Area 3, we will build the school within Area 3.

Q Have you ever had a situation in which you could solve the problem or, say, two problems existing in two contiguous zones by building one school?

A Not yet.

Q You have just never had that situation?

A No, we haven't. We have been severely over-crowded and we haven't had this occasion so far.

Q Now, going back to the proposal that I suggested in terms of building schools west of Rock Creek Park to

accommodate students from both sides of the park, other than the fact that that may violate some notion of the neighborhood school, is there any other practical problem that that might create?

A I would say definitely there is. This is a pretty wide park. Except for a very few places, there is no direct access across the park. This is the Military Road route. You can cross here in a way maybe at Wise Road. You don't get another direct crossing until you come down here to Blagden Avenue and Park Road.

We are talking about children. It is heavily wooded. There is a great deal of traffic on those roads. There are no sidewalks on the roads. And our pupils would be going home in the afternoon. It begins to get dark here in Washington at some parts of the year at four, four-thirty and five o'clock. We would not consider this to be really a safe place for our children to attempt to walk across this park.

Furthermore, there are long distances. Usually we will have an elementary child walking not more, certainly, than three-quarters of a mile. We would like to keep it to a half mile.

Q I understand. That answer refers to various aspects of the problem of transportation of children. Are there any

other practical problems outside of the area of transportation that you would see in the proposal?

A Well, yes, I do. I see this: That if we wanted to replace all three of these schools with a single building, I think this was your suggestion?

Q I didn't necessarily mean a single building, but --

A Well, if we --

Q It could be several but they would be -- what I am visualizing is larger buildings than the ones that are there now so they could accommodate all the children from the west as well as substantial numbers from the east side of the park.

Could you tell me how many buildings that would require?

A These schools more than accommodate all the children west of the park and they all are in good shape, and we would have the practical matter of abandoning a good building and at the public expense building new seats for the people in Area 19 that we don't need on the basis of our existing capacity; and then, too, I think we would agree that we couldn't walk these youngsters across this park, so, therefore, we would have to bus them.

So we have the abandonment of old buildings, the construction of new buildings in this area to accommodate children from here, so we have the other practical problem of busing students from here to here (indicating).

Q Anything else that comes to your mind?

A Not that I can think of at the moment. These are factors that I have considered.

Q I understand. Do you happen to know where the private schools --

Let me withdraw that.

Are there private schools in the District of Columbia which draw students from areas outside the immediate neighborhood where the private schools are located?

MR. EARNEST: Your Honor, I object to this. It is totally beyond the direct examination. Secondly, I don't see the relevancy of this.

THE COURT: Well, I think he is trying to show feasibility.

I will overrule the objection.

BY MR. ANKER:

Q Do you understand the question, sir?

A I think so. I think that there are private schools in the city which draw pupils from a radius greater than a

Now, these are not all the predominantly Negro schools in the District of Columbia, are they?

MR. EARNEST: I would merely make one objection, Your Honor. The pictures were introduced and they have been testified to as to the location of the depicted school in each of the exhibits. But I didn't characterize them in the fashion that counsel has.

They are in areas east of Rock Creek Park, If he cares to use that as a point of demarcation, I have no objection to his questions. I don't like the terminology that he used in saying or in making reference to those school exhibits.

THE COURT: Well, I will overrule the objection.

Those pictures of schools, as I understood, were of the schools that have been built since 1954?

THE WITNESS: They were pictures of schools which have been built since 1964.

THE COURT: Fifty-four or '64?

THE WITNESS: Fifty-four, fiscal year 1954, but we have built many more buildings. We do not have pictures of all of them.

THE COURT: This is a sampling of the schools that

have been built. There have been other schools built besides these, right?

THE WITNESS: Yes, sir.

THE COURT: These schools are all east of Rock Creek Park, aren't they?

THE WITNESS: They are. We have one construction project west of the park which was a small addition to the Deal Junior High School.

THE COURT: You did indicate that those schools were east of Rock Creek Park and I think counsel wants to know whether or not they were predominantly Negro schools.

Are you able to say whether or not they are, in population?

THE WITNESS: There were a few schools built since 1954 -- LaSalle was one which at the time it was built was predominantly white neighborhood.

The same thing would be true of the Draper at this point (indicating), and the Hendley here (indicating).

Now, since that time these neighborhoods have changed and they are now predominantly Negro. And we have had to add to the Hendley. The Draper has been added to. And we are proposing still further construction in the neighborhood.

of Columbia?

A Yes, it is.

Q Is it part of your responsibility, Mr. Woodson, to plan for the location of libraries in the District of Columbia schools?

A No.

Q To plan for those facilities?

A No, sir.

Q Well, in the process of examining what the physical needs are in terms of plant and land for schools in the District of Columbia, do you consider at all the need for libraries for those schools which do not have them now?

A We are making an effort to give each school its own library.

Q Well now, what is the nature of that effort?

A This would be a school library operated by the school system for school pupils.

Q Yes, but when you say you are making an effort, what specific effort is being made? Are there plans to build a library, for example, for each school that does not now have one?

A Yes, sir.

Q And on the basis of those plans, when will every

school in the District of Columbia have a library?

A Well, we would hope by the end of this six-year public works program. In other words, in fiscal 1973 we hope to have this accomplished.

Q How many will have libraries at the end of fiscal 1967; do you know offhand?

A About 70. About 70 schools in the elementary system. Each secondary school does have a library. Some of these are not -- were not built as such; they are somewhat makeshift but when we modernize we will give them a good standard library.

Q Well just for the moment let's talk about the elementary schools. At the end of 1967 70 elementary schools out of a total of 130 --

A (Witness nods assent.)

Q -- will have some kind of a library, is that it?

A Yes. Some that we could in any sense of the word call a library. Even at that, there are schools where they found a small room and we have built shelves, and while I don't call it a library, it serves that purpose to a very limited extent.

Q Well, will you have this form of a makeshift library -- in the figures you have given me, you have counted



A Perhaps 25 or 30.

Q All right, sir. What about the ones where we added major additions, not maintenance?

A This makes a pretty long list. I am sure it must be in the neighborhood of 50.

Q All right. Concerning the GAO or the General Accounting Office proposal to close certain of our schools, do you happen to know what action the Board of Education took concerning that request?

A The Board of Education approved the continued use of these buildings as they were being used. But I would like to say this: Most of these schools' vacant space is now being used for children in severely mentally retarded classes, and this kind of thing.

Q But the Board said: We need the space and we are going to use it.

A Yes.

Q All right, sir. Now, out of an abundance of caution, I want to ask you one other question.

On direct I asked you about integration or stabilization is the word I used, of the neighborhood as a factor in selecting a school site.

I will modify that to use the word integration as a factor and I want to know, Mr. Woodson, every area on that chart which is Defendants' Exhibit No. 75 in which we have undertaken to do this when viewing new construction possibility.

I think you have already pointed them out but I want the record to be plain as to every area or every instance that you can point to in which we tried to do this to integrate in connection with new construction.

A Well, I think our proposal of an addition or separate schools is a case in point (indicating).

Q Area 21 that would be?

A Area 21.

The replacement of the Morgan School is here (indicating).

Q And that is Area --

A This is Area 3. And the modernization of the Adams School will hopefully provide some impetus toward integration (indicating).

The additions which we have proposed at Amidon (indicating).

Q That is Area --

A Area 22. We are building one, two, three, four, five,

six schools in Area 14. We surely hope to get some integration there or, rather, to make the school capacity and physical plant attractive enough to keep white parents in the neighborhood.

And this school has the potential --

Q Now that school is?

A That is Area 9. And the Brent School, which doesn't show on this map except as an addition in --

Q That is Area what?

A This is in Area 20. And the Lenox School in Area 20 would be schools which might help to maintain integration.

The same thing would be true of the Peabody replacement and the Lovejoy-Edmonds replacement.

Q And that is Area what?

A This is in Area 7.

I think potentially this is pretty much it.

The addition to the Gordon Junior High School should be helpful.

Q And that is --

A And also to the Western.

Q All right, sir.

You have that in front of you?

A. Yes, I do.

Q. Then when you get to the lower 20 per cent you have teachers' salaries, 176. 71 out of a total of 343.63 per pupil expenditure?

A. Yes.

Q. So, would you agree with me that in the difference between the two, the per-pupil, what you call "total" cost which I assume is total cost per pupil in the elementary school, and is equivalent to my per pupil expenditure, is that correct?

A. I think so.

Q. For convenience between us, I will use the term "per pupil expenditure" which is synonymous to your term. The difference of teachers' salaries of approximately \$85 amounts to a substantial portion of the per-pupil expenditures for the low 20 and top 20?

A. Yes.

Q. Now, as I understood your testimony on direct, that the major difference, or the major cause of the difference in teachers' salaries was the fact that in some of the schools teachers are permanent teachers, of more years in service, is that correct?

A. Yes, they have more years in service and the higher the salary scale. I believe that is what I said.

Q. Let's consider teachers and their salaries for a moment. As I understand, you worked the system on a step system, is that correct?

A. Yes, we have the Dr. Diggs salary scale. We have salary levels and steps going up to the top, I believe, that requires 18 years of service to achieve the top level in our salary scale.

Q. Is that \$10,500?

A. It was \$10,050 and it may change soon, but it is \$10,050 right now.

Q. All right. When a teacher enters the system, the teacher goes through a probationary period, is that correct, of three years?

A. It is my understanding--this is not my area, that it is two years.

Q. Two years. The teacher starts at a certain salary, is that correct?

A. Yes, they do start at a certain salary.

Q. Which is standard?

A. They do not all start at the same salary. Some of them come in with years of creditable experience. They may start at different levels.

Q. So, if a teacher starts with no experience?

A. They would start \$5350 at the present time.

Q. Do you make any variation with starting teacher

MR. KUNTSLER: I will rephrase the question.

BY MR. KUNTSLER:

Q. You have indicated to me that it is the desire of the system, when I use the word "system" I am referring to the District of Columbia Administration--it is the desire of the system to have teachers aspire for advanced degrees, is that correct?

A. It would be my assumption this would be the case. I would say that the salary scales are, you have to hire teachers on the market, so you have to look at what the other systems are doing and compete.

If another system pays for a Master's Degree, you have to pay for one.

So, to a certain extent we are in a national market for teachers.

Q. But you would prefer, would you not, as an educator, that teachers do try to obtain higher degrees?

A. Oh, yes.

Q. While they are in the system?

A. Yes, and I believe there is a general practice all over the country, you do hope to have people with higher degrees, yes.

Q. Is that because higher degrees are better preparation for a teacher for her or his responsibilities as a teacher?

A. I do not have, and I know of no studies which

have actually shown precisely that all Master degree teachers are always better than Bachelor Degree teachers.

Q. That is not the question, Dr. Carroll, whether they are better or are not better.

A. What is the question?

Q. The question is, is it the system's desire to have or does the system consider its teachers better prepared, I think was the question?

A. Yes, I think--

Q. If they have the advanced degrees?

MR. CASHMAN: Your Honor, I object to the question because the question is attempting to elicit what the system's desire is or what some group thinking is maybe.

Now, we are asking an individual witness to answer for a group. I have the further objection, your Honor, that this witness' area, obviously, is budget and finance and we are getting into now teacher qualification and educational theory in some detail, much beyond, your Honor, the realm of the direct examination.

On those two grounds, I offer that objection.

THE COURT: Well, I think we can end this in a hurry, as an educator, the theory behind paying a teacher more for advanced degrees is that this makes him a better teacher.

THE WITNESS: Yes, I think this, in theory, is true.

We are asking him an opinion that calls for a conclusion in the area of teacher qualification and teacher ability.

Your Honor, I do not believe the witness is equipped to answer the question.

MR. KUNTSLER: Your Honor, the witness has a Master's Degree in education from Harvard and a Doctor's degree in education and administration from Harvard. I would think that he certainly would know this one aspect.

THE COURT: Well, suppose we try the same which we tried on the other. As an educator, Doctor, the theory behind paying a teacher more based on his years of experience is that you are paying for something better than when the teacher started, in other words, some experience at least is good for a teacher?

THE WITNESS: I do not mind responding to this question. The question partly is because improved competence, but as a matter of fact where there is no research, I know of this--the general opinion is after three or four years a teacher probably is not going to improve greaterly although they may improve--from then on you are paying totally to the service and to meet the competition. There are a number of years there will be improvement but after a number of years in the same job, this is not necessarily improvement.



As a matter of fact, one of the real problems in the school systems are the teachers who have gone over the hill so to speak and have reached the top of their ability, and are on tenure and are with your system but are not able to teach as effectively so it is entirely possible that a group of teachers composed of the top of your salary schedule 25 or 30 years might have lower qualifications of teachers now than maybe in the 5th or 6th level of the salary scale.

THE COURT: I understand that. While we are talking--it seems to me if you pay somebody more, you expect to get more for it. I assume that applies to the school system as it does in life.

Let us proceed to something else,

BY MR. KUNTSLER:

Q. I believe you testified on direct that the school system took the position that it was better to have stable faculties, is that correct?

MR. CASHMAN: Your Honor, I would like a reference in the transcript to where counsel is presently referring.

MR. KUNTSLER: I am not quoting.

BY MR. KUNTSLER:

Q. I will ask the witness, did you testify on direct that it is preferable to have stable faculties in various schools?

Object to the question on the ground it is unclear.

THE COURT: I think the record is clear to this extent and that is that the temporary teacher cannot go past the sixth step.

THE WITNESS: Yes, sir, this is correct.

THE COURT: Whereas a permanent teacher has ten steps to go.

THE WITNESS: Actually has about fifteen steps.

THE COURT: Fifteen steps, all right. I think he delineated the range of the steps.

BY MR. KUNTSLER:

Q. Now, with temporary teachers--are there any emoluments or increments given for the acquisition of degrees?

A. Yes, there are.

Q. Now, are they the same as the permanent teacher?

A. There is no difference in the salary scale for temporary or permanent teachers up to step 6, they use the same salary scale.

Q. What I am trying to find out, not the salary scale so much but the increment for a Master's or Doctor's degree or any credits?

A. That is part of the salary scale, yes, it would be exactly the same.

Q. Except that there would be a cutoff for the temporary

teacher, is not that correct?

A. Yes, that's right.

Q. So, if a temporary teacher reached step 6 without any grade cut credit whatsoever, and then obtained graduate credit after reaching step 6, there would be no increment for that?

A. No, they would be able to get an increment if they were at step 6 and had a Master's degree after reaching step 6.

Q. Even if that took them beyond?

A. It does not take them beyond. You don't understand the salary scale. You have step 1 Masters' plus 30; you have step 6, the same three levels so they would still be in step 6 but they would get their increments.

Q. I see.

A. Does that explain it?

Q. So, if a temporary teacher obtained her Master's or her doctorate after reaching Step 6 with just a Bachelor's degree, they would go to another aspect of Step 6 which would be the Bachelor's plus Master's, then if they took 30 degrees of credit, plus 30, is that correct?

A. Yes, that is right.

Q. Now, doctor, we have spoken now about the fact that teachers go up in salary as they remain in the system.

know where--

MR. KUNSTLER: It is in evidence, your Honor.

THE COURT : We can do this for hours.

MR. KUNSTLER: I will not go any further with that.

BY MR. KUNSTLER:

Q. Now, in analyzing the top 20 schools and taking into consideration what we have discussed about the teachers, did you find that the difference in teachers salary between the top 20 was due --and the bottom 20--was due to the factors which we have discussed?

A. What factors?

Q. We discussed two factors, one--number of years in the school system; and two, number of degrees or graduate credits.

A. I would say that they were the number of years in the school system was the predominant reason.

Q. That is the predominant reason?

A. Yes, sir.

Q. Did the other factor--the number of degree-credits have any relationship to the figure at all?

A. I could not tell from the evidence I have here. It was not analyzed on that basis.

Q. Doctor, I think it was your testimony if I am not mistaken, that educationally it was your opinion that a more stable faculty led to a better school, is that correct?

with relatively large numbers of teachers in order to better balance the proportion of temporary and fully qualified teachers among schools?

A. Yes, sir.

Q. It goes on to say this circular also requires that biracial faculties be established to the greatest extent possible.

A. Yes, sir, I wrote that.

Q. You wrote that.

Now, can you indicate for the record here whether, from your knowledge of the school system the most stable school staffs are in what we would call the predominantly white schools of the northwest area?

A. I am not sure that I can look at the map and say that. What I am saying is that high cost schools and low cost schools differ because of the size of the schools and the age of the buildings and that older buildings still in use tend to have had staffs which are older and remain in those buildings; that new schools more recently constructed tend to have to organize their new faculties and, therefore, have younger staffs which tends to be lower in the salary scale and, therefore, results in lower per-pupil cost.

I pointed this out in this statement here because the Superintendent's Circular 247 did urge and try to accomplish

what we are referring to here, a greater mixing of the permanent teachers across the system and also established bi-racial faculties.

Q. I just want to know whether you can answer that question, whether the more stable faculties existed in what we call the elementary schools in Zones 1 and 2, for example?

A. I believe in Zone 1, it would be my opinion, you would have more stable faculties as a result of the older smaller school staff.

Q. What about Zone 2, do you have any opinion as to that?

A. Yes. I believe 2, generally, the same situation would be true there in Zone 2, though Zone 1 is a better example, I think.

Q. Now, in making up your figures which you used for teachers' salaries, did you take into consideration at all the fact that these teachers --let me withdraw that and put it this way.

It is true, is it not, Dr. Carroll, that in the school system there are what we call under-pupiled schools, schools which are not operating to their full pupil personnel capacity?

A. Yes, there are some.

A. Yes, I did.

On page 9 Exhibit 4, we compared the age of the buildings and I can go through this, but I did put it in my direct testimony.

Q. I am looking at page 9. That is your exhibit 4.

A. Yes, sir.

Q. And in the top 20 per cent of the schools, the buildings averaged 53 years as against 30 years in the lower 20 per cent, is that correct?

A. Yes, that is right.

Q. Now, did the age of the school have any relationship to custodial salaries, if you can recall?

A. The age of the school, I believe would have something--what are you saying--age of the school has something to do with custodial-

Q. That is right.

A. What I am saying is the older building is likely to have an older custodial staff like it may have an older teacher staff.

Q. But you are not saying the building, itself, as you might with maintenance costs, would cause higher custodial costs?

A. Yes, it might in terms of design. I am again getting off my direct a little bit but don't mind. The older



buildings tend to have a higher number of square feet, usable square feet. Shall I say they have more wasted space. They are a little harder to maintain and I would say this may cause an increase in the custodial salaries even on a per pupil basis.

Q. Would it also cause an increase in the number of per pupil staff, the number?

A. Yes, and I have not gone into this, something on square footage or character of the building. I should point out we are again dividing by per-pupil and when you get a custodial staff in the building utilized such as in the Grant School, you will find your custodial costs divided among a small number of pupils, that would account for the increase.

Q. So, it is similar to the teacher situation, is it not, that the custodial salaries would tend to be higher when you have fewer pupils as would the teacher salaries?

A. Yes, this is right.

Q. Costs per pupil?

A. It would have the same effect.

Q. Now, let us look at maintenance for a moment, which is on your chart at No. 7, where you indicate that the maintenance costs in the upper 20 per cent of the schools is approximately 7 times the maintenance costs in the lower 20 per cent, is that correct?



A. Yes, I would say five or six, but that is O.K.

Q. I would not quibble with you.

A. It is many times, yes.

Q. It is many times. This is due to the fact, as I would understand, that it requires more heat and more everything really to maintain an old school as against a new school?

A. Yes, but the new school has not started breaking down. You have to remember that maintenance over a normative period or thirty years, when you first build a school, you do not expect to have a lot of maintenance any more than you do on a new car. Although that may not be a good example.

As a result, you do not have such maintenance costs on new schools as you do on old ones, 20 years from now these schools will have maintenance costs because there will be breakdown, deterioration.

Q. What I am getting at, Dr. Carroll, is it because of this vast discrepancy in maintenance costs between new schools and old schools, would that in your opinion be in the interests of the District wherever possible to build a new school instead of maintaining one, let us say, that has an average age of 53 years?

MR. CASHMAN: Your Honor, that calls for a conclusion on the part of the witness?

THE COURT: Sustain the objection. I think you are going outside--he is very educated but I do not think he is much of a builder.

MR. KUNSTLER: All right, your Honor. I will get away from that.

BY MR. KUNSTLER:

Q. I will ask you then a question with reference to the utilities and miscellaneous costs that you have for the top 20 per cent. You have a figure of \$29.80 and the bottom 20 per cent you have a figure of \$21.32.

Would you explain why there is a difference in the utilities?

A. Well, again there is a per pupil cost, and the cost of heating, lighting, running your ventilating fans, which I guess is electricity, also, and you have your textbooks, supplies and so forth, are all in utilities and miscellaneous costs.

Now, in the case of the utilities and particularly the heating, you may be heating a school which was being under utilized with a small, an old school which has poor heating and you are going to divide the cost of that annual

heating bill by a very small number of pupils. In the large school, you are going to have a more efficient heating plant and you are going to be delivering that cost among larger numbers of pupils so you find the variation in the per pupil costs.

Now, the textbook and others, I do not believe you will find any significant variation in these particular costs.

Q. Before we leave the elementary schools, your Exhibit 1, I notice on No. 10 on that page, that you attribute the difference between the upper and lower figures of per pupil expenditure to be accounted for as far as 59.7 per cent goes, by the difference in teacher's salaries, is that correct?

A. Yes, total teacher's salaries.

THE COURT: Dr. Carroll, would it be convenient for you to come back tomorrow morning at 10 o'clock?

THE WITNESS: Yes, sir. Any time I can be of service.

THE COURT: Is that convenient?

MR. CASHMAN: Yes, your Honor, it is. Could I have some estimate of how long counsel intends to be with the witness so that I can kind of line up the remaining witnesses?

which he has already testified Doctor Johnson --

THE COURT: I overrule the objection. I think the witness may be able to answer the question.

THE WITNESS: The report which I have here, which constitutes the subject here today, showed, I think rather clearly, that the differences in cost between high cost and low cost schools on elementary, junior, and senior high, did not vary consistently on the basis of non-white enrollment.

BY MR. KUNSTLER:

Q Well, isn't it true, Doctor Carroll, that your top twenty percent of the elementary schools selected by you contain a great many Negro schools.

A The testimony indicates, I think, that the percent of non-white enrollment in the high cost schools was 74 percent.

Q 74 percent. So your answer would be Yes, that it contains a great many Negro schools.

MR. CASHMAN: Your Honor --

THE WITNESS: Large percent of Negro enrollment.

MR. CASHMAN: Your Honor, the witness is giving him actual figures, 74 percent.

Whether it contains a great many Negroes is conjectural and debatable. He is getting factual information from this witness and he insists upon characterizing it as being

Q Is it not true, Doctor Carroll, that in the method -- by selecting twenty percent on either end that the net result will be that the variance between the high cost school and the low cost school will tend to be narrower than if you had selected the top ten schools and the lower ten schools?

A It would even be greater if you used the top school and the bottom school, yes.

Q That's right.

Now, in selecting the twenty percent figure on both ends, did you not have in mind the fact that this would give you an average, and average variance which would be a variance that would be much less than had you made another statistical sampling such as I am suggesting?

A The thrust of that question is that I rigged the statistics.

Q The thrust of the question --

A And the answer is now.

Q -- is exactly that.

A And the answer is No, I selected them on a basis which was apart from the question of 10 or 15 or 12 -- I selected it on the variation, the overlap of variation between the teachers salaries, the average teachers salaries in the various decile -- I consider this a competent, proper way to make a

you don't believe, do you, Doctor Carroll, that the statistical analysis that you have presented, as far as race goes, alone, is any valid analysis of white and Negro schools?

MR. CASHMAN: Your Honor, that seems to me to be the very same question.

MR. KUNSTLER: No, Your Honor, I submit that is quite different.

THE COURT: Well --

MR. KUNSTLER: They have offered this document, Your Honor;-- ostensibly if it has any probative value -- to prove that white schools do not get a much greater per capita than Negro schools.

That is the only purpose in this law suit.

And I am trying to get the witness to indicate that this is not a proper statistical analysis of that fact.

If he will say it isn't, I will go to something else.

MR. CASHMAN: Your Honor, counsel presumes in a statement what we intend to prove by this document.

The obvious intention that we have by this document is to show that between the high cost schools on a per pupil expenditure basis and the low schools, as selected by Doctor Carroll, that teachers salaries and salaries themselves are the great and dominant factor for the difference between the

two.

A further comment, Your Honor, that teachers are not assigned to schools on the basis of salaries. It has nothing to do, Your Honor, with respect to predominately white schools or predominately Negro schools.

It is a cold hard statistical cost analysis.

THE COURT: Well, Mr. Kunstler, it seems to me that this line of testimony, this line of questioning anyway, is largely argumentative, at least the answers that you are asking for are obvious from the facts.

Now by that I mean you can get the answer by taking a pencil and getting it, doing a little arithmetic.

Now, what it comes out, I don't know, but certainly it is a mathematical computation.

MR. KUNSTLER: I realize that, Your Honor.

THE COURT: I don't think it is necessary to argue with the witness about it.

MR. KUNSTLER: I would say in the light of what counsel has said, that this is not offered to show any variation between white and Negro schools or what the amount of that variation might be, but merely to show that teacher costs form a great part of the difference between the top twenty percent and the bottom twenty percent -- I would accept that.

If that is the purpose of the offer I accept that.

THE COURT: All right.

BY MR. KUNSTLER:

Q Now, Doctor Carroll, let's just look at teachers salaries for a moment.

I believe your testimony was yesterday that teachers tend to remain --there are more stable faculties, for example -- in the older schools rather than the newer schools, is that correct?

A I believe my testimony was that the older schools tend to have more stable faculties and that it is not a part of your good administrative practice to distribute teachers around a system on the basis of the salary paid to the teacher.

Q Now, you are familiar, are you not, with the older schools that have predominately Negro populations in the city?

A What do you mean by familiar?

Q Do you know them?

A I know some, yes.

Q And you know the predominately white schools that have older buildings in, say, the area west of Rock Creek.

A I know there are some over there, yes.

Q Now, thinking only of the older schools -- and I am eliminating all the schools built between 1954 and 1966



predominately Negro or predominately white.

THE COURT: Let's get over the impasse here.

Suppose you ask the witness what the basis of that statement in his report is.

BY MR. KUNSTLER:

Q I will read the statement, Doctor Carroll, and then ask you the question again.

It is on page 2 of your report.

A. Yes, sir.

Q It starts off:

Prudent management requires that transfers be minimized since it takes time to orient a teacher to a new school and a new community.

Staff are not transferred unless there are compelling program or personal reasons.

Thus, older staff members tend to concentrate in older schools with stable or declining enrollment, while new teachers tend to be assigned to new schools or to those where enrollments are increasing.

A Those derive, number one, explanatory of the facts which showed in the study, the facts that the schools which had high costs were much older; the schools which had low costs were very new.

I point out that 19 out of 26 in the elementary level had been built or added to since 1950.

Now, my knowledge and also my discussions with other Assistant Superintendents who do work directly in this field, they -- clear evidence that the explanation of this is that when you have a school faculty operating, and operating effectively in an older building, they tend to be higher on the salary scale, while on the newer building they tend to have many more new teachers assigned to the school, and, therefore, they have a lower per pupil cost.

I also point out here that that is the basis for the statement.

Q Now, I will ask you the question a different way, then.

Is it not true that there are Negro older schools -- and I am talking about schools built approximately 50 years ago?

A Yes, I believe that is true.

Q And is it not true that these schools do not have as stable faculties as the older predominately white schools?

A This was not done -- and the study was not done on the basis of a comparison of Negro and white.

It was done on the basis of the costs, and then we

in the higher two deciles, and you find only one for the lower two deciles, isn't that correct?

A. What is that again?

Q. Ten to one.

A. No, I don't think you said lower two deciles. I am not sure your statement is --

Q. I am looking at your chart --

A. I am dealing with the lower two and the upper two deciles.

Now, what are you saying?

Q. I am saying is it not true that in the schools representing the upper two deciles you have ten schools where the median income is \$9,000 and above, whereas you only have one school in the lower two deciles?

A. In that income bracket.

Q. That is correct.

A. Yes, that is true.

Q. Conversely, with reference to the higher income group, you have 14 schools which are under \$7,000 in your top two deciles and 21 schools that are under \$7,000 in your lower two deciles, isn't that correct?

A. Yes, that is what the figures show.

Q. Are you stating here that this shows no pattern, no

discernible pattern between the two groups?

A The reason for writing this in this document, and I say this does not show a pattern, because you find low, middle, lower middle, upper middle, and upper income in both high and low income.

When I say a pattern here, I am referring to a pattern of discriminate administration which is, of course, one of the things which is concerned in this trial.

There is no pattern of discrimination by intent or administration shown here and this is the thrust of the statement there and this is the question which I think we are faced with.

The explanation of the lower income, apparent, more of the low cost group being in the lower income areas, is explained by the number of new schools which have come into the areas with the increasing enrollment, which happen to be in this particular areas of the city, in this area of the city.

Q So when you said there was no pattern, you were not referring to a statistical pattern, but you were referring to a pattern of discrimination, is that right?

A I was referring to the statistical pattern shown here as not showing a pattern of discrimination.

Q Then as I -- just to end this line of inquiry, as I

understand it, you made a determination in drawing up or having assembled these figures that this type of pattern showed no discrimination by the school administration.

MR. CASHMAN: Your Honor, I think that is the answer the witness just gave.

THE COURT: Yes.

MR. KUNSTLER: All right.

Now, may I have F-4?

BY MR. KUNSTLER:

Q Now, here is F-4 in evidence, and I ask you if you can indicate to the Court what that document is.

A It says: Per Capita Expenditures of Elementary Schools for the District of Columbia, 1962-63.

Q Now, if I can just indicate for the record, this is a document which was received by plaintiffs as an official document of the District of Columbia School System and was introduced into evidence on that basis.

Now, I ask you to compare the per capita expenditures of the elementary schools for the year '62-'63, which appear on F-4, with the figures for the same schools which you have placed on your appendix under elementary schools, and ask you whether your figures and those figures are the same, or whether they differ.

MR. CASEMAN: Your Honor, I object to the question on the same grounds.

THE COURT: It is the same question. Let's proceed to something else.

BY MR. KUNSTLER:

Q On the bottom of page ten, your Number 4, you state that the difference in per school costs cannot be explained in terms of the assignment of resources on the basis of race, economic status nor in terms of the assignment of quality staff to favored schools.

I would like to ask you why you placed your Number 4 in your report, to what it was directed at?

A Yes, sir. The first question, these cannot be explained. First it was the basis of race. May I address myself to that question first?

May I refer you to Exhibit 5 on page 12, Mr. Kunstler.

The Exhibit 5 compares factors between elementary junior and senior high schools, high cost and low cost groups for each level on a number of factors including the per cent of nonwhite enrollment.

Now, if there was an attempt to, shall we say, discriminate on the basis of race, there is reason to think that this attempt would be shown on elementary junior and senior high schools, why discriminate on only one level.

The study shows that in the case of elementary schools the low cost group did have the larger per cent of nonwhite enrollment. The study also showed, though, that the low cost group on junior high schools had a higher per cent of low cost enrollment, although very very slightly higher. The senior high school, the high cost group schools with the highest costs had a higher per cent of nonwhite enrollment. Therefore, on that basis, in the case of race, I could see no evidence that there was a discriminatory factor shown by these cost differentials.

Now, if we come to the second question,---

Q If we can stay with race for a moment.

A Could I finish my answer?

MR. CASHMAN: Your Honor, I wish the witness would be permitted to answer the question. Because the question related to a conclusion that the witness came to relating to more than just the factors of race. I think he should be.--

MR. KUNSTLER: I'll withdraw, Your Honor.

THE COURT: All right, sir. You may proceed.

THE WITNESS: The question of economic status, again I refer you to Exhibit 5 and the same comparisons between levels of school and on the same assumption that if there is discrimination it should show up in all three levels, why discriminate on only one level.

And here you find that fourteen of the high

cost group of the elementary, were, let me put it this way: That the high cost group on the elementary tended to be in the higher income group, that is underlined there, higher income.

On the junior high you found the low cost group happened to be serving higher income areas, and on the senior high you find low-cost groups tend to serve low-cost areas. I point out Wilson is in that low-cost group.

So there is not a consistent pattern between elementary junior and senior high in the terms of income levels in the areas in which these schools are located.

If I may now go ahead and the assignment of the quality staff for favored schools, quality is the most debatable question, but per cent of <sup>temporary</sup> ~~text~~ teachers was the basis for my conclusion here as also shown on Exhibit 5 on page 12.

<sup>temporary</sup> The per cent of ~~text~~ teachers in the elementary schools was higher in the low-cost group, but in the junior high schools it was higher on the high cost group and in the senior high schools it was higher in the high cost group. So this did not vary consistently across the levels.

And this is the basis for my conclusion, based on facts presented in this report, that this was the case.

BY MR. KUNSTLER:

Q In other words, you reached these conclusions solely



BY MR. KUNSTLER:

Q Can you answer that question?

THE COURT: Are you in a position to answer that question, Doctor, do you remember the question?

Will you read the question.

(Question read by the reporter.)

THE WITNESS: My answer is that there is strong indication that there is not a discriminatory pattern being practiced in the District of Columbia schools in the terms of cost data shown here.

BY MR. KUNSTLER:

Q Just to end this inquiry, that is how you drew the conclusion that you have in Number 4 on page ten?

A Yes, sir.

Q And that would be true, also, with reference to teacher assignments and with reference to income levels, is that correct?

A Yes, sir, I stand on my previous testimony.

Q Now, you come at the end of your report, I am referring now to page thirteen, to state that there is no evidence of systematic assignments of <sup>temporary</sup> ~~te/m~~ teachers to low-cost schools, and I would like to ask you whether you made an analysis of the elementary schools to determine whether there was a systematic assignment of <sup>temporary</sup> ~~te/m~~ teachers to white schools

as against Negro schools, whether that entered into your calculations?

A The study was not done on the basis of a comparison of white and Negro schools. The assignment was done on the basis of and with the intent of explaining why there are high costs, high per pupil cost schools and low per pupil cost schools.

The evidence of assignment of <sup>temporary</sup> t/ae teachers is in the document and it would show and it does show that there are in one level of education, the high cost schools would have more of a higher per cent of <sup>temporary</sup> t/ae teachers while in another level the low cost teachers will have a higher per cent of temporary teachers.

On the basis again that if there was a purposeful discrimination you will find a pattern on all three levels I conclude there was no evidence of purposeful misassignments of staff to low-cost schools.

Q Just to end the question of the <sup>temporary</sup> t/am teachers, you indicate on page 12 in your Exhibit 5 that taking your two top deciles in the elementary schools, 24.9 per cent of the team teachers, of the staff are <sup>temporary</sup> t/ach teachers, is that correct?

A Yes, sir.

Q You don't know or didn't take into consideration the percentage in what we call predominantly all-white schools as

THE WITNESS: No, this was not part of my study.

BY MR. KUNSTLER:

Q When you say it was not part of your study, you did take into consideration, did you not, in the study as one of your reasons, why there were more permanent teachers in the upper two deciles than the lower two deciles, in that the schools in the upper two deciles had more stable staff, isn't that correct?

A Let me explain why it may be lower, why you may have more stable staff in the high cost. I also point out that equally important is the fact that you have in your staffs in the others-- it is the combination of the two that make it different.

Q I realize that, but one of the factors in the upper two deciles was the staff?

A In the upper two deciles that was a depressant, if you will in this case.

Q All I am asking is did you make the same study in the lower two deciles?

A You say the same study -- would you clarify?

Q The stability as to teacher staff to which you attribute the higher teacher costs in the upper two deciles, did you make the same study in the lower two deciles?

A Well, the stability of staff as I explained previously

was a characteristic of the schools which the older schools have not had, increasing enrollments or additional staff, and therefore there is a tendency to have more stable faculties. This accounts for higher teacher costs because they move up in the school. A teacher hired at step one twenty years ago is now at \$10,000 and probably started at \$4,000-something at that time.

In the case of the low cost schools, I pointed out the difference comes from two factors, not just one, that there are many new schools and the new schools have new teachers which tend to have a higher percent of temporary, and therefore you get a higher concentration of temporary teachers in the low-cost schools.

That's my answer, sir.

Q But I am asking you only whether outside of the new schools, whether you made any study of the stability of the staffs in the lower two deciles as you must have done in the top two deciles?

A The word study is a recognition from your professional competence in the field of why a certain factor occurs.

In this particular case I was explaining why you have a higher per cent of temporary than in the lower cost schools, and a lower per cent of temporary in the older schools, which happen to be high cost.

teachers and the amount of permanent teachers, is that correct?

A The per cent of <sup>temporary</sup> teachers within the staff, yes, sir.

Q Now, lastly, Dr. Carroll, looking at the bottom of page thirteen again, you say "Finally, it is clear that no useful management decisions can be derived from comparisons of gross per pupil operating costs of school buildings."

Would you explain to me exactly what you meant by that?

A Yes, sir. It is necessary in any school system to have certain data upon which a school administrator can try to make decisions. You can't sit in every classroom, you can't follow every child.

This is true in every major industry, and is a management problem, the larger you get the more difficult this is.

Now, certain normative or statistical data derived consistently presented to an administrator can cause a person to take certain actions. For instance, if you pick up a list of the schools and you find in one school you have ten classes that are organized at ten to one and ten more classes organized forty-two to one, to be extreme to make a point, obviously you must question why a principal organizes a school with ten at ten to one and ten at forty to one. There may be a good reason.

This would be a useful management tool sometimes referred to



to be as control information. Now, to take a gross per pupil cost and then by looking down these costs and see 400 in one case and 300 in another case, and to make a conclusion that there is mismanagement in the system without making a careful analysis of the whole constellation of other factors, is completely unwarranted and would not be done by any person I know who is a competent professional in this field.

In fact, it is so unreliable because of the variation of teacher salaries of over 90 per cent in our case, presently 5350 and 10,050, it is so unreasonable that it is not the kind of information that a superintendent should put before him. There are other statistics which the superintendent does get and we gather a great number of them, which do form the basis for management action. This gross per pupil cost information does not provide a useful basis for management action.

Q Would the difference in what you call teacher stability between various schools in the system be of, in your opinion, of interest to the Superintendent of Schools?

MR. CASHMAN: Your Honor, may we get a definition of what "teacher stability" means?

MR. KUNSTLER: Teacher stability.

MR. CASHMAN: May we get a definition of "teacher stability?"

MR. KUNSTLER: I will refer basically to Dr.

